

UNITED STATES FEDERAL GUIDANCE ON WITNESS PROTECTION  
IN HUMAN TRAFFICKING

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by

DANIEL J. TRZNADEL, CHIEF INSPECTOR, US MARSHALS SERVICE  
B.S., Park University, Parkville, Missouri, 2003

Fort Leavenworth, Kansas  
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THESIS APPROVAL PAGE

Name of Candidate: Daniel J. Trznadel

Thesis Title: United States Federal Guidance on Witness Protection in Human  
Trafficking

Approved by:

\_\_\_\_\_, Thesis Committee Chair  
Heather R. Karambelas, M.A.

\_\_\_\_\_, Member  
Richard E. Berkebile, Ph.D.

\_\_\_\_\_, Member  
LTC Philip W. Goddard III, MBA

Accepted this 12th day of June 2015 by:

\_\_\_\_\_, Director, Graduate Degree Programs  
Robert F. Baumann, Ph.D.

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## ABSTRACT

UNITED STATES FEDERAL GUIDANCE ON WITNESS PROTECTION IN HUMAN TRAFFICKING, by Daniel J. Trznadel, 95 pages.

The United States needs overarching federal guidance on witness protection for human trafficking victims/witnesses in order to enhance their safety and participation in prosecuting their traffickers. The international response predicates itself on a victim-centered approach that works along four distinct efforts to combat the problem: Prevention; Protection; Prosecution; and Partnership. Protection of victims is essential for all victims regardless of their cooperation in anti-trafficking efforts, namely trafficker prosecution. Protection comes in two forms, access to social services and physical protection from human traffickers. A prosecutor's ability to secure vital testimony at trial – increasing the likelihood of conviction – was interrelated to the victim witness receiving protection. Federal guidelines for other components of the fight against trafficking, such as the provision of social services, mirror international advice and practices and are clearly outlined, allowing state and local governments to formulate effective policies in providing support to victims of trafficking. As a result, state and local governments vary in their approach to the physical protection of human trafficking victim witnesses. The thesis argues that victim witness cooperation is improved when victims receive aid and protection and that offering even minimal physical protection increases the likelihood of witness cooperation.

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## ACRONYMS

C-TIP	Counter-Trafficking in Persons
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
Four Ps	Prevention, Protection, Prosecution, and Partnership
GIFT	Global Initiative to Fight Human Trafficking
HHS	Department of Health and Human Services
ILO	International Labour Organization
MS-13	Mara Salvatrucha
NGO	Non-governmental organization
PITF	President's Interagency Task Force to Monitor and Combat Trafficking in Persons
SPOG	Senior Policy Operating Group
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
U.S.	United States
USAID	United States Agency for International Development
U.S.C.	United States Code
USMS	United States Marshals Service



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## CHAPTER 1

### INTRODUCTION

Human trafficking is the nexus of organized crimes, is a source for funding for international terrorist groups, is a source of funding for transnational criminal groups. It fundamentally endangers international security . . . let me emphasize that when it comes to trafficking, one thing that we do know is that we don't know enough . . . the President spoke of trafficking as a form of exploitation that hides both in the dark corners of our world and in plain sight in our own towns and country-towns and cities. We know in certain areas we don't have great data on the scope of the problem. And in terms of our programming, we may know what works and what doesn't, but we're still learning precise causal relationships. That's why the President's demanding that we keep the focus on learning and improving our interventions.

— Denis McDonough, Deputy National Security Advisor,  
*2012 Annual Meeting of the President's Interagency Task  
Force to Monitor and Combat Trafficking in Persons*

#### Introduction to the Problem

Human traffickers are in the business of making money at the expense of other human beings. The recent expansion of national guidance and statutory enactments at the national and state levels indicates that society is increasingly aware of the issue, and is becoming serious about dealing with human trafficking victims and traffickers. Creation of anti-trafficking alliances, coalitions, and multi-agency task forces indicates that uniformity in practices is a desired approach to combatting the problem. Successful prosecution of human traffickers serves as a deterrent to would-be traffickers and is a message to other traffickers that there is risk in their enterprise. Testimony by human trafficking victims is usually essential to a human trafficking prosecution.

If witness testimony is a key component to successful prosecution as a deterrent to criminal activity, then it is vital to properly identify witnesses against the perpetrators.

Unfortunately, in the battle against the vast criminal enterprise of human trafficking, merely identifying victims is not enough to secure their participation in the criminal justice system as witnesses. “Human trafficking cases are often not prosecuted because of a lack of witnesses. We need to turn victims into witnesses to assist law enforcement.”<sup>1</sup> This is difficult due to the nature of trafficking victims and their traffickers.

Human trafficking victims lack personal power to control their own environment. Human traffickers armor themselves against prosecution by preying on vulnerable, disenfranchised members of society, who will not betray them for fear of physical reprisal by the traffickers, deportation by the United States (U.S.) Government, or prosecution for crimes committed as trafficked humans. Furthermore, fostered dependence on the traffickers for survival means that “saved” survivors require a support structure to replace the system that previously provided basic human necessities.

Unless victims feel safe, have their basic needs satisfied, and can control the direction of their lives, they may not willingly participate as witnesses in the prosecution of their traffickers, which will, in turn, decrease the likelihood of prosecution and thereby be ineffectual in deterring trafficking. Victim witnesses must have protection before, during, and after prosecution. Despite this need, the federal government has not addressed witness protection protocol in its guidance to combat human trafficking.

Research shows the international community recognizes the need for witness protection in combatting human trafficking. The United Nations (UN) made it clear through the Palermo Protocol of 2000 and subsequent guidance providing the

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<sup>1</sup> United Nations Office on Drugs and Crime, “UNODC Launches Witness Protection Manual,” 13 February 2008, accessed 20 October 2014, <http://www.unodc.org/nodc/en/press/releases/2008-02-13-2.html>.

international community with a common framework and direction for combatting human trafficking that witness protection has an important role in the effort. Understanding the international strategy to combat human trafficking will help demonstrate in what ways U.S. guidance is lacking with regard to witness protection as compared to the international guidance.

In reviewing the requirements of the Trafficking Victims Protection Act (TVPA) and its reauthorizations as well as the guidance set forth by the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), Senior Policy Operating Group (SPOG), and Federal Strategic Action Plan 2013-2017, it is apparent that the United States' understanding and approach to "protection" of witnesses differs from that of the international community. Within the "protection and assistance for victims" concept, the U.S. government appears to view protection as it relates to the protection of human rights and availability of social services. Witness protection is a service provided by the federal government's witness protection program. However, that service is only available in the most extreme circumstances and as a last resort. It is not clear that the U.S. government shares the view that witness protection is a necessary part of victim aid. For practical use in the U.S. effort to combat human trafficking, and unlike UN guidance, witness protection is notably absent from this important discussion. This research will compare UN to U.S. guidance as they pertain to witness protection, and discuss witness protection as another tool to increase successful anti-trafficking efforts by providing standard guidance at all levels of government.

### Research Question

Should U.S. guidance on combatting human trafficking include witness protection protocols as an additional victim-centered service? This thesis analyzes the United States' current guidance in combatting human trafficking and addresses the potential need for a U.S. Government witness protection policy as relates to enhancing prosecution efforts. Current guidance stops short of recommending or outlining physical protection for trafficking victim witnesses. The amount of trafficker prosecutions compared to the vast number of trafficking victims in the United States alone is relatively small and, according to the numbers, does not appear to deter traffickers. The nature of trafficking victims and their traffickers necessitates federal guidance on protection protocols. This work will examine several points which, when combined, will demonstrate the applicability of national law enforcement driven witness protection program format to the victim protection and offender prosecution aspects of combatting human trafficking. This thesis aims to stimulate high-level discussion and assist the U.S. Government in its fight against human trafficking.

### Significance of the Study

Worldwide, human trafficking is currently a low risk, high profit enterprise for criminal organizations, including terrorist networks. Due to the complexity of this problem, sources admit they have no firm number of trafficking victims, either globally

or within the United States.<sup>2</sup> For instance, the International Labour Organization (ILO) estimates that almost 21 million people are victims of forced labor, but according to the Walk Free Foundation's 2014 Global Slavery Index, 35.8 million people globally live in some form of modern slavery.<sup>3</sup> The Foundation estimates that 60,100 persons are living in modern slavery in the United States. However, review of literature reveals that these are only estimates.<sup>4</sup>

Even without an agreed-upon, firm number of victims, it is clear, human trafficking is a serious problem, from a basic human rights perspective. National leaders agree that trafficking is an ethical and humanitarian concern for Americans. However, because trafficking is tied to criminal and terrorist enterprises, decision-makers on all fronts agree there are national security implications for the United States.<sup>5</sup> Human

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<sup>2</sup> United Nations Office on Drugs and Crime, *Global Report On Trafficking in Persons 2014* (United Nations Publications, 2014), accessed 28 April 2015, [http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP\\_2014\\_full\\_report.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf); United Nations Office of Drugs and Crime, *Global Report On Trafficking in Persons 2009* (United Nations Publications, 2009), 9, accessed 28 November 2014, [http://www.unodc.org/documents/human-trafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf).

<sup>3</sup> International Labour Organization, "Forced Labor, Human Trafficking and Slavery," accessed 2 November 2014, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>; Walk of Freedom Foundation, *Global Slavery Index 2014* (Australia: Hope for Children Organization Australia, 2014), 1, accessed 28 November 2014, [http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global\\_Slavery\\_Index\\_2014\\_final\\_lowres.pdf](http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf).

<sup>4</sup> Walk of Freedom Foundation, *Global Slavery Index*.

<sup>5</sup> George W. Bush, *The National Security Strategy* (Washington, DC: White House March 2006), 47, accessed 29 November 2014, <http://nssarchive.us/NSSR/2006.pdf>; Hyun Soo Suh, "Human Trafficking 'a National Security Issue,' Obama Task Force Told," *Cable News Network*, 15 March 2012, accessed 13 November 2014, <http://thecnnfreedomproject.blogs.cnn.com/2012/03/15/human-trafficking-a-national-security-issue-obama-task-force-told/>.

trafficking has been found to be a lucrative source of funding for criminal organizations and terrorist networks.<sup>6</sup> Human trafficking is appealing to terrorist groups because it offers high return and low risk financing. Department of Homeland Security (DHS) estimates global proceeds at \$32 billion annually while the ILO's approximation is \$150 billion.<sup>7</sup> These concerns help drive policy and government spending in battling trafficking.

The Polaris Project, an organization that monitors human trafficking, reports an uptick in state anti-trafficking legislation, particularly in those states that acknowledge a trafficking problem within their borders.<sup>8</sup> While the Polaris Project does not evaluate the funding or effective implementation of the laws, it is evident that at least from 2011 through 2014, there is an increasing urgency to create legislation on the state level.<sup>9</sup>

Income from human trafficking, by worldwide terrorist networks, is used in furtherance of activities contrary to U.S. national interests. With enactment of the

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<sup>6</sup> Elsi Gonzalez, "The Nexus Between Human Trafficking and Terrorism/ Organized Crime: Combatting Human Trafficking by Creating a Cooperative Law Enforcement System" (J.D. thesis, Seton Hall Law eRepository, 2013), 13, 15-16, accessed 9 February 2015, [http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1227&context=student\\_scholarship](http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1227&context=student_scholarship).

<sup>7</sup> U.S. Department of Homeland Security, "Definition of Human Trafficking," 22 December 2014, accessed 26 November 2014, <https://www.dhs.gov/definition-human-trafficking>; International Labour Organization, "ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion," 20 May 2014, accessed 29 November 2014, [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm).

<sup>8</sup> Polaris Project, "A Look Back: Building a Human Trafficking Legal Framework," 2014, 2, accessed 13 December 2014, <http://www.polarisproject.org/storage/2014SRM-capstone-report.pdf>.

<sup>9</sup> Ibid., 4.



Trafficking Victims Protection Act (TVPA) in 2000, the U.S. Government addressed human trafficking as a national priority. Since then, federal, state, and local resources have been increasingly allocated to combat human trafficking through prevention, protection, prosecution, and partnership. However, defining human trafficking in precise terms has proven difficult. There are various classifications of offenders and victims. Offenders range from structured international criminal organizations to a single person and included forced labor and sex trafficking. Victims may be U.S. citizens or immigrants, laborers or sex workers, minors or adults, male or female. As guidance, awareness, and involvement continue to expand, efforts are born in the form of legislation, investigation, outreach, and social services. The grand effort to curb human trafficking is in its relative infancy and is slowly learning to develop and enact strategy, share best practices, and collaborate efforts.

However, this process of growing and learning on a national scale is cumbersome, and causing many organizations, agencies, and jurisdictions to formulate their own individual responses to problems. Even as the White House and other federal and state agencies, including the Department of Justice, stand up task forces and develop policies to assist trafficking victims, no federal guidance has yet been specifically developed regarding physical protection as an avenue to assist victims and enable prosecution. General success at any level can usually be enhanced by a unified national approach and common operating procedure that is recognized by all jurisdictions. A unified and mutually supportive national protection plan for human trafficking victims will increase the availability of willing witnesses in all nature of human trafficking cases. Increased

witness testimony will, in turn, increase prosecution rates and promote a general deterrent to human traffickers.

### Key Definitions

Throughout this thesis, definitions from various organizations, including international organizations, are reviewed and referenced. For the purposes of this thesis, the definitions below provide a singular framework from which to construe the context of the document.

Case Management: Service coordination, provided by a professional, in which the service recipient is a partner, to the greatest extent possible, in assessing needs, defining desired outcomes, obtaining services, treatments and supports, and in preventing and managing crisis. The focus of the partnership is a process that assists the person to achieve the greatest possible degree of self-management of disability and/or life challenges. The individual/family and the practitioner plan, coordinate, monitor, adjust, and advocate for services and supports directed toward the achievement of individualized, personal goals for community living.<sup>10</sup>

Human Trafficking: The definition is treated equivalently to the TVPA definition of severe forms of trafficking in persons:

1. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

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<sup>10</sup> National Association of Case Management, “NACM Definition of Case Management and Service Coordination,” 2014, accessed 29 November 2014, [http://www.yournacm.com/membership/what\\_cm\\_sc.html](http://www.yournacm.com/membership/what_cm_sc.html).

2. The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>11</sup>

Types of sex trafficking include prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism. Labor trafficking situations may arise in domestic servitude, restaurant work, janitorial work, sweatshop factory work, migrant agricultural work, construction, and peddling.<sup>12</sup> Subsequent reauthorizations of the TVPA do not focus on the transportation or physical presence of the victim. Rather, the TVPA looks to whether there have been acts of exploitation to determine whether human trafficking is at issue.<sup>13</sup>

The TVPA definitions align with those of the UN Palermo Protocol and United Nations Office on Drugs and Crime (UNODC), which emphasizes the enslavement aspect of trafficking rather than the transaction aspect.<sup>14</sup> For the purpose of this thesis, human trafficking is cross-defined and used interchangeably with “modern-day slavery,” involving such crimes as sexual exploitation, forced or bonded labor, domestic servitude,

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<sup>11</sup> Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, *U.S. Statutes at Large* 114 (2000): 1464, codified at *U.S. Code* 22 (2000), § 7101, accessed 29 November 2014, <http://www.state.gov/documents/organization/10492.pdf>.

<sup>12</sup> Victims of Trafficking and Violence Protection Act of 2000.

<sup>13</sup> Heather Clawson et al., “Human Trafficking Into and Within the United States,” in *Study of HHS Programs Serving Human Trafficking Victims* (Washington, DC: U.S. Department of Health and Human Services, 2009), 3, accessed 29 November 2014, <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.shtml>.

<sup>14</sup> Ibid.

forced marriage, organ removal, and the use of children in begging, prostitution, and warfare.<sup>15</sup> This definition also informs the work of the PITF, which coordinates agencies and organizations in anti-trafficking efforts within the U.S. Department of State (DOS), and sets U.S. anti-trafficking policy.<sup>16</sup>

Victim: As applied to the definition of human trafficking, above, and by U.S. law, a victim of human trafficking can be divided into three categories: “children under the age of 18 induced into commercial sex; adults (age 18 or over) induced into commercial sex through force, fraud, or coercion; and children and adults induced to perform labor or services through force, fraud, or coercion.”<sup>17</sup> For the purposes of this thesis, use of the term victim will encompass any or all victims and not delineate between categories.

Victim Centered Approach: This thesis uses the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017 definition of a victim-centered approach: The victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their

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<sup>15</sup> United Nations Office on Drugs and Crime, *Global Report On Trafficking in Persons 2009*; Barack Obama, “Remarks by the President to the Clinton Global Initiative” (Speech, Sheraton New York Hotel and Towers, New York, NY, 25 September 2012), accessed 21 March 2015, <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

<sup>16</sup> U.S. Department of State, “Office to Monitor and Combat Trafficking in Persons,” accessed 28 November 2014, <http://www.state.gov/j/tip/index.htm>.

<sup>17</sup> National Human Trafficking Resource Center, “The Victims,” accessed 22 December 2014, <http://www.traffickingresourcecenter.org/what-human-trafficking/human-trafficking/victims>.

traffickers brought to justice. In this manner, the victim-centered approach plays a critical role in supporting a victims' rights, dignity, autonomy, and self-determination, while simultaneously advancing the government's and society's interest in prosecuting traffickers to condemn and deter this reprehensible crime. A victim-centered approach in the United States has developed over time to respond to crime victims.<sup>18</sup>

Witness: For the purpose of this thesis, the definition of witness is meant to focus attention on victims, as defined above, who actively participate in the process of bringing their traffickers to justice by providing evidence and testimony in support of prosecutorial efforts.

Witness Protection: Numerous governmental organizations define witness protection and witness security synonymously, as providing varying degrees of physical safety measures and social service assistance. Therefore, unless specifically stated otherwise, the general context that should be associated with the terms witness protection and witness security throughout this thesis is a law enforcement applied service that provides for the physical protection, and other authorized needs, of government witnesses and authorized family members.

Chapter 2 provides a summary of the current frameworks developed by various levels of government to combat human trafficking. The UN and the U.S., as leading authorities, afford similar guidance in most respects. Literature is also reviewed, as pertains to case management and witness protection systems and their place in the global response to human trafficking. Chapter 3 describes the qualitative methodology used to

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<sup>18</sup> U.S. Department of Justice, *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017* (CreateSpace Independent Publishing Platform, 2015), 20.

set the stage, analyze research, and deduce meaning to answer the primary thesis question. Chapter 4 offers an analysis of UN, U.S., Colorado, and Denver witness protection guidance and the impact on subordinate levels of government. A secondary analysis of protection provided by NGO case management and witness protection systems articulates the strengths and weaknesses of each. In Chapter 5, recommendations for changes to U.S. witness protection guidance and future topics of research are proposed to generate thoughtful consideration by decision makers and others interested in the human trafficking problem.

## CHAPTER 2

### LITERATURE REVIEW

Much of recent literature on combatting human trafficking focuses on prevention of trafficking through identification of potential victims, protecting victims through provision of direct human services for the victims' mental and physical health and stability, and prosecuting traffickers. The current paradigm of "Prevention, Protection, Prosecution, and Partnership" as relates to fighting human trafficking originated internationally in 2000 with the United Nations (UN) Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and with the Trafficking Victims Protection Act (TVPA) of 2000 in the United States. Both government and non-governmental organizations now espouse a victim-centered approach in dealing with trafficking, which includes coordination of services for varying short and long-term victim needs. However, as compared to guidance provided by international entities, there is a lack of discussion in the United States pertaining to the importance of physical protection in aiding prosecution by ensuring reliable witness testimony. The purpose of this thesis is to determine if there should be more expansive and uniform federal guidance on witness protection for trafficking victim witnesses.

#### International Guidance

Human trafficking is a worldwide problem necessitating a unified and coordinated strategy to combat it. Through the UN, the international community recognizes, defines, and provides strategic guidance on combatting human trafficking. In 2000, the UN's Palermo Protocol was the international community's response to the growing global

human trafficking problem. The Protocol established the concept of prevention, protection, and prosecution as the international strategy to combat human trafficking. The Protocol directs nations to establish methods for preventing human trafficking, adopt legislation making human trafficking a crime, and recommends that nations consider providing both physical protection and social services for victims. The Protocol also charges governments to share information and provide training in prevention, protection, and prosecution.

Following the Palermo Protocol, the UN developed an abundance of guidance and good practices, from which nations are encouraged to tailor their efforts to prevent, protect, prosecute, and partner in the fight against human trafficking. In 2008, the UNODC Global Initiative to Fight Human Trafficking published its *Introduction to Human Trafficking: Vulnerabilities, Impact and Action*, outlining preliminary steps in taking measures to identify and stop human trafficking. In 2009, the UNODC Global Initiative to Fight Human Trafficking issued a more detailed treatise, the *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, in which *Module 12: Protection and Assistance to Victim-Witnesses in TIP Cases*, which provides important insight into the disconnect between international and U.S. guidance. In 2009, the UNODC also made available its *Toolkit to Combat Trafficking in Persons* and the UN High Commissioner for Human Rights published *Recommended Principles and Guidelines on Human Rights and Human Trafficking* in 2010. In each of these documents, the UN discusses the need for the physical security of victims. The UN asserts that all criminal justice systems are



accountable for providing measures of protection for persons, and persons close to them, who are at risk of harm due to their cooperation with the criminal justice system.<sup>19</sup>

The UNODC offers guidance to the international community concerning the role of witness protection in prosecuting criminals. Human trafficking victim/witnesses may require unique witness protection measures. Therefore, the UNODC has developed training and standard working procedures for police and criminal justice staff to provide for victim safety, protect victims' privacy, and make it safe for victims to testify against their abusers. The *Toolkit to Combat Trafficking in Persons* provides practical guidance on victim protection, the roles and responsibilities of witness protection programs, and a model witness protection bill for use by agencies responsible for organizing and providing protection services.<sup>20</sup> Applying witness protection measures to human trafficking victims is challenging due to their psychological fragility and the extreme nature of the measures.<sup>21</sup> Thus, module 12 of the UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners* focuses on protection and assistance to victim/witnesses in trafficking persons cases. The “essential concern for all in the criminal justice process is that a person, who is a witness, victim or otherwise, gives the maximum possible cooperation in the criminal justice process”. A “twin track” approach

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<sup>19</sup> United Nations Office of Drugs and Crime, 2014, “Victim and Witness Protection,” accessed 6 December 2014, <http://www.unodc.org/unodc/en/organized-crime/witness-protection.html>.

<sup>20</sup> United Nations Office of Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (New York: United Nations, 2008), 222-239.

<sup>21</sup> Ibid., 235-236.

involves providing physical safety of the witness and providing such assistance and protection as is necessary.<sup>22</sup>

Human trafficking is different from other crimes, therefore trafficking witness protection measures may differ from those used for other types of witnesses. The UNODC emphasizes the need for long-term protection in challenging circumstances and providing appropriate support and assistance together with physical protection: “Ensuring the best possible cooperation of witnesses requires a blend of physical measures to prevent violence and intimidation; and support as well as assistance to address psychosocial factors and other reasons that might prevent that cooperation.”<sup>23</sup> While some cases may warrant a “full range” of witness protection measures, less intrusive applications of protection measures are likely more suitable in human trafficking cases.<sup>24</sup>

The United States Agency for International Development (USAID) produced its *Counter-Trafficking in Persons (C-TIP) Field Guide* in 2013. This policy adheres to the 2000 Palermo Protocol and incorporates the principles of the TVPA of 2000 and its reauthorizations.<sup>25</sup> It describes how USAID will identify foreign governments requiring assistance in developing C-TIP capacity, methods to build or strengthen programs, and

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<sup>22</sup> United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module. 12, Protection and Assistance to Victim-Witnesses in Trafficking in Persons Cases* (New York: United Nations, 2009), 20, accessed 28 November 2014, [https://www.unodc.org/documents/human-trafficking/TIP\\_module12\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module12_Ebook.pdf).

<sup>23</sup> UNODC, *Anti-Human Trafficking Manual*, 3.

<sup>24</sup> *Ibid.*, 20.

<sup>25</sup> U.S. Agency for International Development, “Counter-Trafficking in Persons Field Guide,” April 2013, 6, accessed 26 October 2014, [http://www.usaid.gov/sites/default/files/documents/2496/C-TIP\\_Field\\_Guide\\_Final\\_April%205%202013.pdf](http://www.usaid.gov/sites/default/files/documents/2496/C-TIP_Field_Guide_Final_April%205%202013.pdf).

identifiers used to assess progress and/or collect data for analysis and use in the global conversation about trafficking. USAID asserts, the “protection of trafficked persons is the cornerstone of a victim-centered approach” to C-TIP.<sup>26</sup> In adhering to UN protection and prosecution policy, USAID addresses the importance of witness protection in its C-TIP efforts and recognizes there are limitations as well as possible detrimental aspects of witness protection measures in C-TIP.

### United States Guidance

In 2000, coinciding with the Palermo Protocol, the United States enacted the TVPA. The TVPA sets policy for the U.S. C-TIP effort and tracks with the Palermo Protocol strategy to confront problems through strategies of prevention, protection, and prosecution. As U.S. programs matured and deficiencies became apparent, the U.S. anti-trafficking policy was updated and revised several times through the TVPA, namely in the Reauthorization Acts of 2003, 2005, 2008, and 2013. Each reauthorization presented requirements for new initiatives and funding. The U.S. government coordinates international and federal efforts to combat human trafficking through the PITF, a cabinet level, multi-agency effort chaired by the Secretary of State.<sup>27</sup> The PITF and its operational arm, the SPOG, are tasked with ensuring a whole-government approach that addresses all aspects of human trafficking to include enforcement of criminal laws and

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<sup>26</sup> U.S. Agency for International Development, “Countering Trafficking in Persons,” 26 September 2013, accessed 26 October 2014, <http://www.usaid.gov/trafficking>.

<sup>27</sup> U.S. Department of State, “President’s Interagency Task Force,” accessed 6 December 2014, <http://www.state.gov/j/tip/rls/reports/pitf/>.

victim protection measures.<sup>28</sup> The PITF is required to report its accomplishments annually. Six Anti-Trafficking Coordination Teams have been established in select U.S. cities through the PITF. Each team is designed to enhance federal investigative and prosecutorial coordination guided by an area specific strategic plan.<sup>29</sup> The PITF also established participation of all U.S. Attorney offices in anti-human trafficking task forces. These task forces are comprised of varying degrees of federal, state, and local law enforcement as well as NGOs providing victim services. Some of these task forces focus on criminal investigations and prosecutions; others focus on regional coordination and the unique needs of trafficking victims.<sup>30</sup>

In January 2014, the Department of Justice (DOJ), the Department of Health and Human Services (HHS), and DHS, co-chairs of the SPOG Victim Services Committee, released the *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, in partnership with PITF agencies.<sup>31</sup> The Plan aims to strengthen the combined national effort to provide support to victims of human trafficking through prevention, protection, prosecution, and partnership. It strengthens guidance for government agencies in coordinating and collaborating with other government (including state and local) and non-government agencies to increase the

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<sup>28</sup> U.S. Department of State, “Progress in Combatting Trafficking in Persons: The U.S. Government Response to Modern Slavery, President’s Interagency Task Force,” April 2014, 2, accessed 6 December 2014, <http://www.state.gov/documents/organization/224810.pdf>.

<sup>29</sup> Ibid., 25.

<sup>30</sup> Ibid., 25-26.

<sup>31</sup> Ibid., 8.

national capacity to counter trafficking on all fronts.<sup>32</sup> The plan outlines the statutory framework and government response to human trafficking in the United States and describes the primary sources for federal grant funding. The plan is developed around four major goals: aligning efforts, improving understanding, expanding access to services, and improving outcomes. Services are aligned and improved through a responsibility matrix, defining required actions by agencies to improve access and responsiveness to victims.<sup>33</sup>

### Victim-Centered Approach

As studied by the ILO and the National Human Trafficking Resource Center, traffickers victimize people from varied backgrounds who are made vulnerable by any number of personal, social, or economic reasons.<sup>34</sup> With traffickers' connections to violent criminal organizations, paired with their own extreme vulnerability, victims do not come forward to seek help due to fear and trauma.<sup>35</sup> Thus, law enforcement and

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<sup>32</sup> Federal Strategic Action Plan, Intro letter from AG, SEC HHS, and SEC HS.

<sup>33</sup> Ibid., 13.

<sup>34</sup> International Labour Organization, "ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion"; National Human Trafficking Resource Center, "The 'Traffickers,'" accessed 21 September 2014, <http://www.traffickingresourcecenter.org/what-human-trafficking/human-trafficking/traffickers>; Jody Raphael and Deborah Shapiro. "Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago, Executive Summary," *Center for Impact Research* (August 2002): 1, accessed 26 October 2014, <http://www.impactresearch.org/documents/sistersexecutivesummary.pdf>

<sup>35</sup> National Human Trafficking Resource Center, "The Victims"; U.S. Department of Homeland Security, "A Victim-Centered Approach," 2014, accessed 21 September 2014, <http://www.dhs.gov/victim-centered-approach>; Amy Farrell et al., *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases Executive Summary* (Washington, DC: National Institute of Justice, 2012), 6.

prosecutors must acknowledge the many challenges posed by victim witnesses who typically fear law enforcement, do not identify themselves as victims, are inconsistent and unreliable witnesses, or do not want to cooperate with prosecution efforts.<sup>36</sup>

According to DHS, victims may be afraid to come forward and get help; they may be forced or coerced through threats or violence; they may fear retribution from traffickers, including danger to their families; and they may not be in possession or have control of their identification documents.<sup>37</sup> Therefore, the National Institute of Justice's report on identifying challenges to prosecuting human trafficking cases is not surprising in that "Prosecutors in all jurisdictions overwhelmingly described victim reluctance to testify or lack of cooperation as the biggest challenge they faced prosecuting human trafficking cases."<sup>38</sup>

For this reason, the U.S. government advocates a victim-centered approach. As described by DHS, this approach values the identification and stabilization of victims and focuses on helping victims feel stable, safe, and secure.<sup>39</sup> A victim-centered approach often requires a wide range of services to address a variety of needs, particularly secure

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<sup>36</sup> U.S. Department of Homeland Security, "Victim Support in Case Investigations and Prosecution of Traffickers," accessed 26 October 2014, <http://www.dhs.gov/blue-campaign/victim-info-law>.

<sup>37</sup> U.S. Department of Homeland Security, "Myths and Misconceptions," accessed 26 October 2014, <http://www.dhs.gov/blue-campaign/myths-misconceptions>.

<sup>38</sup> Farrell, *Identifying Challenges*, 8.

<sup>39</sup> U.S. Department of Homeland Security, "Victim Support Blue Campaign Mission," accessed 29 November 2014, <https://www.dhs.gov/sites/default/files/publications/blue-campaign/BC%20inserts%20Victim%20Support%20NGO.pdf>.

housing, before cooperation with law enforcement can be expected.<sup>40</sup> A victim, whose only means of survival was with the trafficker, is in a quandary of conflicting interests when asked to testify.

The federal government recognizes the need for victim services. HHS lists many emergency as well as short and long-term victim needs as part of this approach.<sup>41</sup> However, just as DHS literature fails to detail the need for physical protection as an important facet of the victim-centered approach, HHS guidance also does not detail the necessity for physical security of a threatened victim witness.

### Case Management

The National Association of Case Management defines case management, in part, as a process in which the victim and the case manager “plan, coordinate, monitor, adjust, and advocate for services and supports directed toward the achievement of individualized, personal goals for community living.”<sup>42</sup> In helping victims in the fight

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<sup>40</sup> Farrell, *Identifying Challenges*.

<sup>41</sup> Heather Clawson and Nicole Dutch, “Addressing the Needs of Victims of Human Trafficking: Challenges, Barriers, and Promising Practices,” in *Study of HHS Programs Serving Human Trafficking Victims* (Washington, DC: U.S. Department of Health and Human Services, 2008), accessed 29 November 2014, 2, <http://aspe.hhs.gov/hsp/07/humantrafficking/Needs/ib.shtml>.

<sup>42</sup> National Association of Case Management, “NACM Definition of Case Management and Coordination.”

against trafficking, the U.S. government acknowledges that trafficking victims need effective, comprehensive services, including case management.<sup>43</sup>

In 2006, HHS commissioned a comprehensive study of its programs serving human trafficking victims. One part of the study focused on case management as a critical service for victims becoming self-sufficient. Clawson found that case managers were vital to helping victims navigate the cumbersome maze of available services and thereby fulfilled the service provision requirements of the TVPA. A case manager provides a single point of contact for the victim.<sup>44</sup> Cultural awareness, flexibility, and a single unchanging case manager who advocates for the human trafficking victim are promising approaches to building trust.<sup>45</sup> Clawson found that prosecutors and law enforcement rely heavily on case managers to help stabilize victims. With the help of case managers, prosecutors and law enforcement can focus on investigation and witness preparation.<sup>46</sup> However, Clawson also notes that during certain critical points, case management can be very challenging. For instance, during initial servicing, court related activities, and benefit renewal, human trafficking victims can become very needy, leaning

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<sup>43</sup> President's Interagency Task Force to Monitor and Combat Trafficking in Persons, *Coordination, Collaboration, Capacity: Federal Strategic Action Plan On Services for Victims of Human Trafficking in the United States 2013-2017*, accessed 6 December 2014, <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

<sup>44</sup> Heather Clawson, "Case Management and the Victim of Human Trafficking: A Critical Service for Client Success," in *Study of HHS Programs Serving Human Trafficking Victims* (Washington, DC: U.S. Department of Health and Human Services, 2008), 2-3, accessed 29 November 2014, <http://aspe.hhs.gov/hsp/07/HumanTrafficking/CaseMgmt/ib.pdf>.

<sup>45</sup> *Ibid.*, 5-6.

<sup>46</sup> *Ibid.*, 5.



on a case manager night and day.<sup>47</sup> There are limitations to the capabilities of case managers who belong to agencies of various sizes, and receive different levels of training. Also, due to insufficient funding, case managers sometimes only work part time. This pressure leads to high rates of burnout and turnover.<sup>48</sup>

With an emphasis on the victim-centered approach, case management is an important tool in combatting trafficking. The DOS promotes the use of victim/witness coordinators to help victims navigate the criminal justice system.<sup>49</sup> “Collaboration between law enforcement officials and NGOs that provide comprehensive victim assistance, including legal and case management services, has also proven to be a necessary component in successful prosecutions.”<sup>50</sup> Prosecutors found that “case managers provided an important source of stability for victims that resulted in more consistent and credible witnesses; an important factor especially in cases dependent on victims for successful prosecutions.”<sup>51</sup>

While the Clawson/HHS study speaks in large part to the emotional support element of case management, any discussion of the case manager’s role in procuring or coordinating physical protection was notably absent. Clawson’s study was limited to a small number of prosecutors participating in the study and understandably focused on the

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid., 3.

<sup>49</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014*, 16-17, accessed 15 March 2015, <http://www.state.gov/j/tip/rls/tiprpt/2014/226647.htm>.

<sup>50</sup> Ibid., 27.

<sup>51</sup> Ibid.

social resources and services that HHS provides. The Clawson/HHS study acknowledged that victims' "current safety risk" and "immediate safety" were important to successful trauma recovery models, but neither evaluated the importance of these measures in enhancing prosecution efforts, nor advocated for case managers to be involved in assessment or coordination of physical safety.<sup>52</sup>

This is also true of Rauschert's 2012, University of Richmond study on the continuum of care for survivors of human trafficking, in which she focused on "victim identification and referral, the needs of survivors, innovative programs and models currently being used to meet those needs, interagency coordination in service provision, and the challenges faced by service providers in the United States today." Rauschert emphasized the importance of service provision as a long-term, individualized endeavor.<sup>53</sup> Rauschert acknowledges that the "framework for understanding the nature of service provision for survivors" in the United States focuses on, among other things, basic needs of survivors.<sup>54</sup>

### Witness Protection Programs

The first formal authorization of a witness security program originated with enactment of the Organized Crime Control Act of 1970, Title 5 section 501, wherein the

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<sup>52</sup> Ibid.

<sup>53</sup> Addie Rauschert, *An Individualized Continuum of Care: A Study on the Nature of Service Provision for Survivors of Human Trafficking in the United States*, ed. Cheyenne Varner (University of Richmond, August 2012), 44-46.

<sup>54</sup> U.S. Department of State, *Trafficking in Persons Report*, 15.

United States Attorney General was granted authority to provide witness security.<sup>55</sup>

Lessons learned over the next decade led to passage of the Witness Protection Reform Act of 1984, part of the Comprehensive Crime Control Act of 1984, to formalize many of the internal procedures practiced by the witness protection program.<sup>56</sup> Much of the available witness protection literature focuses on the need to protect witnesses from individuals and organizations they testify against and the legislation authorizing enactment of witness protection programs. While general descriptions of services can be found in statutes and other government documents, specific references to techniques used in protection programs are guarded and not readily available.

That said, relevant insight into the inner workings of witness protection is found in Gerald Shur's book *WITSEC: Inside the Federal Witness Protection Program*.<sup>57</sup> Shur, known as the "father of the witness protection program," speaks to the challenges faced in implementing his vision and describes how law enforcement was finally designated as the conduit for physical protection and social adjustment that witnesses and their families endure as a result. Throughout his book, Shur articulates many growing pains the witness protection program experienced, referring to them not as failures but problems encountered and problems solved.<sup>58</sup> Shur describes successes and failures of witness protection inspectors, and touches on the need for understanding differences in service

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<sup>55</sup> Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (October 15, 1970).

<sup>56</sup> Pete Earley and Gerald Shur, *WITSEC: Inside the Federal Witness Protection Program* (New York: Bantam Books, 2002), 265-266; 18 USC § 3521 Subpart A, Part F.

<sup>57</sup> Earley and Shur, *WITSEC*.

<sup>58</sup> *Ibid.*, 421.

needs among differing cultures, and witnesses involved in criminal activities (drug gangs, cartels, outlaw motorcycle clubs, and terrorist groups). Witness security inspectors have two jobs: protecting and producing witness in court and making sure witnesses and their families receive the required assistance they need to become self-sustaining.<sup>59</sup> Shur also discusses the two key necessities – attitude and trust – that help witnesses in the program make the successful transition to law-abiding self-sustainment.<sup>60</sup> Shur briefly speaks to the success of a “short term program” implemented by the United States Marshals Service (USMS) in Washington DC during the early 1990s, when witnesses were temporarily relocated out of their neighborhoods until they finished testifying.<sup>61</sup> One of the lessons learned is that law enforcement officers assigned to witness security duties must be able to address the array of services required by people under tremendous stress.<sup>62</sup>

Today, the USMS, a branch of the DOJ, is considered the foremost authority on witness security, providing training and guidance throughout the world.<sup>63</sup> Success of the USMS program has been measured in three distinctly different domains: protection of

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<sup>59</sup> Ibid., 272.

<sup>60</sup> Ibid., 273-278.

<sup>61</sup> Ibid., 406-408.

<sup>62</sup> Ibid., 409-410.

<sup>63</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*, accessed 20 March 2015, <http://www.usmarshals.gov/duties/factsheets/>.

witnesses; conviction rates of defendants; and recidivism rates of program participants with criminal histories.<sup>64</sup>

The USMS has long espoused a “client-centered” approach in protecting witnesses in prosecutions, now favored as “victim-centered” by other agencies in battling human trafficking. The USMS has ensured witnesses feel secure in cooperating with prosecutors and in providing necessary testimony by providing physical protection along with the basics of survival such as food, shelter, and security, as well as access to a broad range of services such as health care, education, vocational training, and counseling<sup>65</sup>.

Louie McKinney, a former Deputy Chief of the USMS Witness Protection Program and former acting director of the Marshals Service provides insight into USMS techniques in his memoir *One Marshal’s Badge*.<sup>66</sup> McKinney relates first hand his experiences providing protection in the witness protection program, much of it relating to physical protection measures and personal interactions with high profile criminals who agreed to testify for the government. McKinney provides examples of witness protection personnel failures in judgment such as corruption or inappropriate attachment to protectees. While McKinney occasionally mentions that witness security inspectors tend

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<sup>64</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*; Ronald C. Noble, “Witness Protection/Security a Key Partner in the Judicial Process” (speech, 3rd International Witness Protection Symposium, Lyon, France, 30 October 2008), accessed 20 March 2015, <http://www.interpol.int/News-and-media/Speeches>; B. G. Ohr, “Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes,” Annual Report (Tokyo, Japan: UNAFEI, 2000).

<sup>65</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*.

<sup>66</sup> Louie McKinney and Pat Russo, *One Marshal’s Badge: A Memoir of Fugitive Hunting, Witness Protection, and the U.S. Marshals Service* (Washington, DC: Potomac Books, 2009).

to the needs of witnesses by helping them adjust to their new lives, making them more comfortable in their role as witnesses for the prosecution, he offers little insight into procedures used to enable provision of services to witnesses. McKinney reinforces Shur's assessment that witness protection requires particular police personality traits.<sup>67</sup>

Domestically, states address witness protection legislation in varying degrees and from a range of perspectives. While most states have some form of legislation, others do not. Literature review reveals, however, that no state has anything close to the capabilities of the federal program, primarily due to funding limitations.

Colorado's legislation, for example, provides for a Witness Protection Board that can approve funding or security for prosecution witnesses and mandates that annual training be provided to prosecutors and law enforcement officers.<sup>68</sup> Colorado is similar to other states in that it leaves the development of witness protection measures to the discretion of each individual subordinate jurisdiction. Literature review reveals that there are very few formal witness protection programs in the United States. Of the few that exist, most have been established by the governments of major cities or counties in which major cities reside. One comprehensive document reviewed was the *Denver Witness Protection Program Implementation Guide*, produced by the Denver District Attorney's Office.<sup>69</sup> The guide speaks to witness protection as a tool for use by the District

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<sup>67</sup> McKinney and Russo, *One Marshal's Badge: A Memoir of Fugitive Hunting, Witness Protection, and the U.S. Marshals Service*, 115-116.

<sup>68</sup> C.R.S. 24-33.5-106.

<sup>69</sup> Denver District Attorney's Office, *Denver Witness Protection Program Implementation Guide*, accessed 12 December 2014, [http://www.denverda.org/Witness\\_program/Denver%20Witness%20Protection%20Implementation%20Guide-Final.pdf](http://www.denverda.org/Witness_program/Denver%20Witness%20Protection%20Implementation%20Guide-Final.pdf).

Attorney's Office as part of its victim-centered approach to combat crime, to include human trafficking. There are three pillars to Denver's witness protection approach: tactical victim/witness protection strategies, victim/witness assistance services, and lifestyle transformation.<sup>70</sup> The guide provides insight into the number of investigators Denver assigned to witness protection, personality traits, and skills required to be a witness protection investigator, and duties to include physical protection and in-depth case management for victim/witnesses.

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<sup>70</sup> Ibid., 6-7.

## CHAPTER 3

### RESEARCH METHODOLOGY

The purpose of this thesis is to determine whether U.S. guidance on combatting human trafficking should include witness protection protocols as an additional victim-centered service. The question of whether increased prosecution deters trafficking is not a subject of this study, due in part to the fact that compared to the ever-increasing number of trafficking cases, the number of prosecutions have remained relatively small. This study examines the structure of the fight against human trafficking, international, U.S. Federal, and State of Colorado guidance, as well as guidance and programs in Denver, Colorado. With these understandings, data are analyzed, and the protection, prosecution, and partnership components of combatting human trafficking are compared against issued guidance and established programs.

#### Methodology Type

The research methodology generally follows the three major dimensions of qualitative study offered by Harry F. Wolcott: description, analysis, and interpretation.<sup>71</sup> Description is both intuitive and objectifying in nature, so that the researcher must not only observe and report, but maintain focus and know what not to report.<sup>72</sup> Because this thesis explores witness protection guidance as it relates to governmental efforts to combat human trafficking, there will be a thorough description of the problem of human

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<sup>71</sup> Harry Wolcott, *Transforming Qualitative Data: Description, Analysis, and Interpretation* (Thousand Oaks, CA: Sage Publications, 1994), 6.

<sup>72</sup> *Ibid.*, 56.



trafficking, and international and U.S. strategies to combat it. Conversely, because the goal of providing witness protection services is to ensure the availability of witnesses to testify, regardless of the actual outcome of the prosecutorial process, there will be no research quantifying conviction rates of human trafficking cases.

In research analysis, Wolcott's model of transforming qualitative data distinguishes the difference between analyzing "how things work" and interpreting "what is to be made of it all."<sup>73</sup> Comparison is "calling attention to like features, typically showing how something to be understood is similar to something already familiar." Comparative analysis is a way to "to assess how things are against some set of standards, real or implied, that either describes how they should be or suggests what they could be."<sup>74</sup> This thesis conducts program evaluations of international and U.S. guidance as they pertain to the protection of human trafficking victims/witnesses and as they relate to prosecution of human traffickers.

The information required for this project already exists. No generation or outside collection of external data is required. Literary research is conducted in a logical, organized, and systematic manner in order to gain a full understanding of the topic environment. One disadvantage to this method is that the research is restricted to data that already exist. No personal interviews or questionnaires will be created, conducted, or documented during the course of this research. Thus, no in-person accounts will be considered.

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<sup>73</sup> Ibid., 12.

<sup>74</sup> Ibid., 179.

## Study Design

This thesis's introduction states the problem and research question. Initially, research was developed around the theory that prosecutors are hindered in pursuing human trafficking cases because victims, who provide essential evidence, will often not participate as witnesses due to fear. Human trafficking prosecution efforts are hampered by a lack of willingness on the part of victims to testify against their traffickers. Victims require both a sense of protection and administration of vital humanitarian services to become willing witnesses against their traffickers. Witness protection programs offer a unique system to prosecutors and governments that can accommodate both physical protection and coordinate administration of services to victims before, during, and after testimony in human trafficking cases. In the United States, a structured federally led approach to witness protection for human trafficking victims can provide a common framework and tool for all levels of government in the effort against human trafficking. Research found that U.S. guidance lacks specific direction for federal, state, and local application of witness protection as a tool in the effort to combat human trafficking. Thus, focus shifted to comparing international guidance against U.S. guidance to determine if a gap in the U.S. system exists. The introduction addresses the significance of this study from the standpoint of human trafficking as a national security issue and as a problem that requires continued development of mitigating strategies. Research reveals varying definitions for many terms associated with the topic of human trafficking and provides the reader with context from which to interpret this paper. At times throughout the thesis, other definitions will be discussed. However, this is to provide additional perspective on certain topics at particular points in the paper.

Literature review is based on Wolcott's analytical framework method wherein "any framework imposes structure on the descriptive account if structure is what the research-or the researcher-needs."<sup>75</sup> The literature review follows a progression starting with an understanding of the human trafficking problem as it relates to this thesis. International and U.S. authorities have produced guidance aimed at coordinating a unified and standardized victim-centered approach to combat human trafficking through prevention, protection, prosecution, and partnership. Literature review of policies, laws, and guidance provides the framework for international and U.S. efforts to combat human trafficking. Literature review concludes with examination of program reviews, policy, and program guidelines regarding case management and domestic witness protection programs as they apply to physical protection and administration of services for victims and witnesses.

### Sources of Data

The primary sources of data for this research are government documents and reports produced by non-government organizations active in anti-human trafficking efforts. The majority of government documents come from UN, U.S., and state legislation; UN, U.S., and local programmatic guidance and accomplishment reports; and U.S. federal and state task force structure and responsibility documents. Major non-governmental organizations contributing to this thesis include the Polaris Project, National Human Trafficking Resource Center, National Association of Case

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<sup>75</sup> Wolcott, *Transforming Qualitative Data*, 20.

Management, The International Labour Organization, and Walk Free Foundation.

Additional sources include articles and literature by subject matter experts.

### Data Analysis

In chapter 4 research is analyzed systematically, looking at the differences in witness protection guidance provided at the local, state, federal, and international levels of government. This thesis evaluated the human trafficking problem, maturation of the comprehensive legal framework that makes human trafficking a crime, and development of governmental guidance in furtherance of a victim-centered approach to combatting human trafficking. The U.S. Government recognizes that the development of an effective comprehensive effort to combat human trafficking is an ongoing process. As such, new ideas and conceptual integration of current programs, not yet employed in federal guidance, are ripe for analysis and comparison as what “could be.”<sup>76</sup> Analysis includes a close examination of witness protection as it relates to the concepts of protection, prosecution, and partnership by both the international community and the U.S. government. Context for analysis will be given by comparing international guidance to U.S. guidance. Analysis will further evaluate and compare the domestic response to federal and international guidance by examining the state of Colorado and city of Denver as it relates to the use of witness protection as a tool in combatting human trafficking. A summary of findings will be depicted in a completed comparison of witness protection guidance chart.

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<sup>76</sup> Wolcott, *Transforming Qualitative Data*, 179.

Table 1. Comparison of Witness Protection Guidance				
Level of Government	Protection(P1): assistance in becoming self-reliant	Protection(P2): from retaliation/harm	Prosecution: promotes witness testimony	Partnership: requires inter-organizational coordination
United Nations				
United States				
State of Colorado				
Denver				

*Source:* Created by author. Depicts a comparison of whether witness protection guidance is provided, to address the universally accepted four Ps approach, at various levels of government in their respective strategies to combat human trafficking.

In order to answer the question “should U.S. guidance on combatting human trafficking include witness protection protocols as an additional victim-centered service?” further analysis of the difference between case management and witness protection systems was necessary. The system comparisons were based on their ability to accomplish four essential tasks necessary to meet the needs of both the victim and the prosecution effort. Scores were assigned on a scale of 1-3, 1 being the most capable. A summary of findings will be depicted in a completed comparative analysis of comprehensive protection capabilities chart.

Table 2. Comparative Analysis of Comprehensive Protection Capabilities				
Protection Management System	Capability: Single Long Term Point of Contact for Witness	Capability: Coordination of Access to Services for Witness	Capability: Conduit to Prosecution Effort.	Capability: Coordination of Physical Protection for Witness
Case Manager				
Witness Protection Officer				

*Source:* Created by author. Comparison on a scale of 1-3 (one being the most capable) weighting the capabilities of case managers to those of witness protection officers.

### Assumptions

This thesis assumes that human traffickers are in the business of making money at the expense of other human beings. The recent expansion of national guidance and implementation of statutory enactments at the national and state levels indicates that society is becoming more serious about helping human trafficking victims and prosecuting traffickers. Creation of anti-trafficking alliances, coalitions, and multi-agency task forces indicates that uniformity in practice is a desired approach to combatting human trafficking. Successful prosecution of human traffickers serves as a message to other traffickers that there is risk in their enterprise and so, deters other would-be traffickers.

Another assumption is that testimony of human trafficking victims is a necessary component of successful human trafficking prosecution. Victims who feel safe from intimidation and harm from traffickers are more likely to testify against them. Each victim of human trafficking requires an individual prescription of protection and services for transition to become a willing witness in the prosecution of their trafficker(s). The federal government will not protect human trafficking victims/witnesses who are in danger as a result of cooperating in state prosecutions. The federal witness protection program employs physical protection methods and practices that states can benefit from without having to implement costly comprehensive witness protection.

Worldwide, human trafficking is currently a low risk, high profit enterprise for criminal organizations, including terrorist networks. Income from human trafficking, by terrorist networks throughout the world can be used in furtherance of activities contrary to the national interest of the U.S. Any new practice or enhancement to current

capabilities employed by the U.S., as a world leader, in efforts to deter human trafficking, will be recognized throughout the international community.

### Limitations and Delimitations

This research focuses on the use of witness protection programs by prosecutors to provide protection and services to victims in order to secure willing witness testimony in human trafficking cases. It does not include providing protection or services to victims who refuse or cannot testify in the prosecution of their traffickers. Although this research does refer to the practice of incarcerating victims to ensure their availability as witnesses, it does not address the application of protection and services under these circumstances.

This study explores the application of victim/witness protection in successful prosecution of traffickers, but focuses on international, federal, and state guidance relating to witness protection as a victim-centered service. This thesis does not focus in depth on the origins of human trafficking, prevalence of trafficking by country, or the breakdown of trafficking in its various forms. The thesis does not examine in depth the socio-economic causes of human trafficking or the moral or philosophical reasons why trafficking should be eradicated.

Many of the specific practices used by witness protection programs are necessarily guarded and unpublished. Therefore, much of the available literature is general in nature. Most information regarding services expected of witness protection programs is found in legislation. Some details can be found in literature written by past practitioners and participants. These firsthand accounts are very insightful, but the quantity of this information is limited.

Use of the term “victim” is used in a general sense, combining all categories of severe forms of human trafficking victims as defined by U.S. law. It is important to recognize that victims are categorized by law for various reasons including application of criminal code and eligibility for services. However, the scope of this thesis does not address each individual category and does not delineate between them.

### Summary

A qualitative analysis methodology was used for this research because the coordinated fight against human trafficking is in its relative infancy. Only since 2000 have the U.S. and the international communities been working to develop programs within a defined framework. Even now, understanding of human trafficking is limited, attempts to build and coordinate systems to prevent, protect, prosecute, and partner are far from seamless, and have yet to be effective in countering human trafficking. For these reasons reliable data for analysis are unavailable, and are not being collected. Conclusions will be articulated in a manner that identifies any gap in U.S. guidance as it relates to witness protection as a tool to combat human trafficking.



## CHAPTER 4

### ANALYSIS

To answer the question of whether U.S. guidance on combatting human trafficking should include witness protection protocols as an additional victim-centered service, various sources were studied to determine the nature and problem of human trafficking. This study illuminated the reasons why combatting human trafficking is a national security interest and how human trafficking is fought at the global, national, state, and local levels. In addition, sources were analyzed to determine whether and what witness protection guidance, policies, and programs exist as relate to combatting human trafficking; what protection capabilities are offered through case management systems; and what protection capabilities are offered through witness protection systems. The primary purposes of analysis are to compare witness protection protocols developed at varying levels of government and to compare the protection capabilities of case management systems to those of witness protection systems in combatting human trafficking.

#### Nature and Problem of Human Trafficking

Until recently, the definition and understanding of human trafficking by governments and authorities varied in phrasing, emphasis, or perspective. In 2000, the UN and U.S. aligned their definitions of human trafficking. Under these universally accepted definitions, the ILO estimates that almost twenty-one million people are victims

of forced labor.<sup>77</sup> According to the Walk Free Foundation’s 2014 Global Slavery Index, globally, 35.8 million people live in some form of modern slavery, and 60,100 persons are living in modern slavery in the United States.<sup>78</sup> “As many as 17,500 people are trafficked to the United States each year, according to U.S. government estimates.”<sup>79</sup> These estimates are low. In 2014, the UN determined that the “question of the magnitude of the trafficking problem—that is, how many victims there are—is hotly debated as there is no methodologically sound available estimate.”<sup>80</sup> This is because it is unclear what share of human trafficking cases come to the attention of the authorities and “not all crimes committed are discovered (the so-called *dark number* of undetected crimes).<sup>81</sup> Thus, a large share of human trafficking activities is not detected by national authorities or other institutions.”<sup>82</sup>

As the estimated number of victims increases each year, so does the number of prosecutions. Since 2004, the DOS has compiled worldwide human trafficking statistics

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<sup>77</sup> International Labour Organization, “Forced Labor, Human Trafficking and Slavery.”

<sup>78</sup> Walk Free Foundation, *Global Slavery Index 2014*.

<sup>79</sup> Alison Siskin and Liana Sun Wyler, *CRS Report for Congress: Trafficking in Persons: U.S. Policy and Issues for Congress*, RL34317 (Washington, DC: Congressional Research Service, 19 February 2013), 15, 43-45, accessed 20 March 2015, <https://www.fas.org/sgp/crs/row/RL34317.pdf>.

<sup>80</sup> United Nations Office on Drugs and Crime, *Global Report On Trafficking in Persons 2014*

<sup>81</sup> United Nations Office of Drugs and Crime, *Global Report On Trafficking in Persons 2009*.

<sup>82</sup> Ibid.

(table 3). Compared to the estimates of people being trafficked, identification, prosecution, and conviction are startlingly low. Yet, the numbers are slowly improving.

Table 3. Department of State Trafficking in Persons Report 2014				
Year	Prosecutions	Convictions	Victims Identified	New or Amended Legislation
2006	5,808	3,160		21
2007	5,682 (490)	3,427 (326)		28
2008	5,212 (312)	2,983 (104)	30,961	26
2009	5,606 (432)	4,166 (335)	49,105	33
2010	6,017 (607)	3,619 (237)	33,113	17
2011	7,909 (456)	3,969 (278)	42,291 (15,205)	15
2012	7,705 (1,153)	4,746 (518)	46,570 (17,368)	21
2013	9,460 (1,199)	5,776 (470)	44,578 (10,603)	58

*Source:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014*, accessed 15 March 2015, <http://www.state.gov/j/tip/rls/tiprpt/2014/226647.htm>. The above statistics are estimates only, given the lack of uniformity in national reporting structures. The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

In the U.S. between 2005 and 2009, The U.S. Department of Justice charged an average of nearly 100 defendants per year and obtained an average of 72 convictions per year.<sup>83</sup> The Department of Justice is making strides in its ability to prosecute traffickers as evidenced by 2012 data, reporting 200 defendants charged and 138 convictions.<sup>84</sup> However, these numbers are still meager when compared to the estimate of over 60,000 victims in the U.S. today.

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<sup>83</sup> U.S. Department of Justice, *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons*, July 2010, 49, accessed 15 March 2015, <http://www.justice.gov/archive/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf>.

<sup>84</sup> Ibid.

In the United States, male and female human trafficking victims of all ages have been identified in cities, suburbs, and rural areas in all fifty states and Washington, DC. Victims of human trafficking have diverse socio-economic backgrounds, varied levels of education, and may be documented or undocumented. Traffickers target victims using tailored methods of recruitment and control they find effective in compelling that individual into forced labor or commercial sex. According to the National Human Trafficking Resource Center, some populations are more vulnerable to trafficking than others. For instance, runaway and homeless youth lack a strong support network and run to unfamiliar environments where trafficking flourishes.<sup>85</sup> A study in Chicago found that seventy-two percent of women who began prostituting between the ages of twelve and fifteen had run away from home.<sup>86</sup>

Traffickers use force, fraud, or coercion to lure their victims and force them into labor or commercial sexual exploitation. They look for people who are vulnerable for a variety of reasons, including economic hardship, natural disasters, or political instability.<sup>87</sup> “Income shocks and poverty [are] the main economic factors that push individuals into forced labour. Other factors contributing to risk and vulnerability include lack of education, illiteracy, gender, and migration.”<sup>88</sup> The National Human Trafficking Resource Center explains how traffickers exploit and manipulate these vulnerabilities:

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<sup>85</sup> National Human Trafficking Resource Center, “The Traffickers.”

<sup>86</sup> Raphael and Shapiro, “Sisters Speak Out.”

<sup>87</sup> U.S. Department of Homeland, “A Victim-Centered Approach.”

<sup>88</sup> International Labour Organization, “ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion.”

Human traffickers prey on people who are hoping for a better life, lack employment opportunities, have an unstable home life, or have a history of sexual or physical abuse. Traffickers promise a high-paying job, a loving relationship, or new and exciting opportunities and then use physical and psychological violence to control them.<sup>89</sup>

Victims are also disempowered to escape or seek assistance by language barriers and fear/mistrust of government officials, particularly law enforcement. Individuals who have experienced violence and trauma in the past are more vulnerable to exploitation, as the psychological effect of trauma is often long lasting and challenging to overcome.<sup>90</sup> The trauma can be so great that many may not identify themselves as victims or ask for help, even in highly public settings.<sup>91</sup> In addition, “although in most criminal cases, police are alerted to the existence of the crime by either victims or witnesses affected by the crime, this type of reactive identification practice is much less effective in cases of human trafficking.”<sup>92</sup> Victims are unseen by the public, hidden by traffickers and those benefitting from their services, and are unlikely to report victimization to law enforcement for fear of being arrested.<sup>93</sup>

This reticence undermines anti-trafficking efforts. The fight against human trafficking involves the successful prosecution of traffickers as a deterrent to trafficking. Victims who testify against their traffickers play an important role in bringing about convictions. However, a victim, whose only means of survival was the trafficker, is in a

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<sup>89</sup> National Human Trafficking Resource Center, “The Traffickers.”

<sup>90</sup> National Human Trafficking Resource Center, “The Victims.”

<sup>91</sup> U.S. Department of Homeland Security, “A Victim-Centered Approach.”

<sup>92</sup> Farrell et al., *Identifying Challenges*, 6.

<sup>93</sup> Ibid.

quandary of conflicting interests when asked to testify. It is a reasonable assumption that a basic hierarchy of needs dictates that a victim's cooperation with law enforcement for greater societal good will not come before the satisfaction of more basic human survival needs, including protection from the threat of harm.

### In the Nation's Best Interest

With this basic understanding of human trafficking and the vulnerability and needs of its victims, President Obama explains why trafficking should matter to Americans:

It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name—modern slavery.<sup>94</sup>

Other government officials, such as a sponsor and supporter of anti-trafficking legislation in the U.S. House of Representatives, Congressman Frank Wolf, agree and emphasize the national imperative to fight human trafficking on humanitarian grounds because “it is happening in American cities, to American children. Knowing this, we must not choose to look the other way.”<sup>95</sup>

DHS estimates human trafficking to be a \$32 billion per year industry, second only to drug trafficking as the most profitable form of transnational crime.<sup>96</sup> The ILO states that forced labor and human trafficking generate \$150 billion globally, in such

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<sup>94</sup> Obama, “Remarks by the President to the Clinton Global Initiative.”

<sup>95</sup> Wolf, “Wolf Opening Statement at Trafficking Hearing.”

<sup>96</sup> U.S. Department of Homeland Security, “Definition of Human Trafficking.”

areas as construction, manufacturing, mining, utilities, agriculture, forestry, fishing, domestic work, and sex work.<sup>97</sup> As inferred by President Obama, human trafficking is a dark market enterprise. It is largely tied to criminal and terrorist organizations. In his presentation of the U.S. Security Strategy, President George W. Bush noted that trade in humans “corrodes social order; bolsters crime and corruption; undermines effective governance; facilitates the illicit transfer of weapons of mass destruction and advanced conventional weapons technology; and compromises traditional security and law enforcement.”<sup>98</sup> At the Obama Administration’s third meeting of PITF, Deputy National Security Adviser Denis McDonough, similarly acknowledged, “Human trafficking is at the nexus of organized crime, is a source for funding for international terrorist groups, (and) is a source for funding for transnational terrorist groups. It fundamentally endangers international security.”<sup>99</sup>

Human trafficking is appealing to terrorist groups because it offers high return, low risk financing.<sup>100</sup> As one example, Mara Salvatrucha (MS-13), a gang with Salvadorian origins, has used human trafficking for many years to sustain its operations. MS-13 has extensive influence throughout the United States, and is alleged to be engaged in talks with Al-Qaeda.<sup>101</sup> Monetary tracking efforts in the War on Terror have resulted

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<sup>97</sup> International Labour Organization, “ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion.”

<sup>98</sup> Bush, *The National Security Strategy*.

<sup>99</sup> Suh, “Human Trafficking.”

<sup>100</sup> Gonzalez, “The Nexus,” 22.

<sup>101</sup> Ibid., 23.

in significant depletion of traditional funding sources, such as donor bank transfers, for these groups. In response, criminal organizations and terrorist groups, requiring an alternate means of income to support their operations, have turned to human trafficking to sustain their operations. Victims are traded for money, goods, and services to this end.<sup>102</sup> In addition to the human rights and economic concerns, to the extent that human trafficking funds enemies of America, the United States has had no option but to also recognize and act on the serious national security implications presented by human trafficking.

#### Approaches to Combatting Human Trafficking

In 2000, through the Palermo Protocol, the UN established the international “3 Ps” comprehensive approach to combatting human trafficking. The three “Ps”: prevention, protection, and prosecution form a three-pronged strategy. Prevention seeks to deny human traffickers the opportunity to victimize. Protection seeks to identify and rescue victims. Prosecution seeks to punish and deter traffickers. The intent of the three Ps approach is to coordinate the prongs in a manner that enables each to maximize its impact while supporting the others. The UN advocates that the relationship between prosecutors/investigators and the victim/witness be the means of bringing the trafficker to justice; the relationship between the service providers and the victim/witness be the means of protection from recidivism or re-victimization; and the relationship between the witness protection officer and the victim/witness be the means by which the other relationships are facilitated through partnerships within an environment of physical

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<sup>102</sup> Ibid., 15-18.



safety. Witness protection for human trafficking calls for individualized solutions involving close coordination between law enforcement, the justice system, state programs, and NGOs providing victim-services.<sup>103</sup>

This approach was simultaneously reinforced in the U.S. through the TVPA of 2000. Then in 2009, Secretary of State Hillary Clinton officially added Partnership as the fourth “P” in the strategic approach to combatting human trafficking, recognizing that a positive impact relies on the expertise, resources and efforts of many individuals and entities, including government and non-government bodies in such areas as human rights, labor and employment, health and services, and law enforcement.<sup>104</sup>

#### Comparison of Witness Protection Guidance

While the accepted four Ps approach to combatting human trafficking is consistent, witness protection in anti-human trafficking strategies varies at the various levels of government. Table 4 compares witness protection guidance in various jurisdictions. The UN incorporates specific guidance regarding the use, benefits, and limitations of witness protection protocols. The U.S. advocates protection of victims through social service provisions, but does not provide guidance for the general use of witness protection. The State of Colorado promotes witness testimony in all manner of crimes by maintaining a fund through which subordinate jurisdictions are reimbursed for expenses incurred while providing protection. However, Colorado does not specifically

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<sup>103</sup> United Nations Office of Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, 236-238.

<sup>104</sup> U.S. Department of State, “Partnerships,” 2015, accessed 21 February 2015, <http://www.state.gov/j/tip/4p/partner/index.htm>.

address human trafficking, nor does it provide guidance in how witness protection should be implemented. The city of Denver developed their own unique system.

Table 4. Comparison of Witness Protection Guidance				
Level of Government	<b>Protection(P1):</b> assistance in becoming self-reliant	<b>Protection(P2):</b> from retaliation/harm	<b>Prosecution:</b> promotes witness testimony	<b>Partnership:</b> requires inter-organizational coordination
United Nations	Yes	Yes	Yes	Yes
United States	No	No	Yes	Yes
State of Colorado	No	No	Yes	No
Denver	Yes	Yes	Yes	Yes

*Source:* Created by author. Depicts a comparison of whether witness protection guidance is provided, to address the universally accepted four Ps approach, at various levels of government in their respective strategies to combat human trafficking.

The UN promotes and provides guidance regarding the use of witness protection police as relates to protection (P1), protection (P2), prosecution and partnership.

According to the UN, “witness protection in trafficking in persons cases is a twin track approach of securing the physical safety of the witness and providing such assistance and protection as is necessary. The overall goal of this approach is to maximize the chance the witness will cooperate and ensure that cooperation is of the highest possible quality.”<sup>105</sup> Guidance provided by the UN expresses the role of witness protection, as it relates to partnership, as a liaison between victim/witnesses (the client) and prosecutors, investigators, courts, NGOs, and other service providers. Lists and dialogue of witness

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<sup>105</sup> United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual*, 3.

protection principles, guiding principles, recommended measures, and responsible parties can be gleaned from various UN manuals, guides, and toolkits. A concise summary of the cumulative UN guidance is provided here as it relates to the comparisons in table 4.

According to the UN, witness protection officers need to possess unique qualities and skills that enable them to be, among other things, vigilant protectors, innovative thinkers, and social workers.<sup>106</sup> The UN provides an exhaustive list of witness protection measures that should be considered for use in human trafficking cases. The UN further delineates tasks to be carried out by investigators, prosecutors, and judges. These tasks include: assessment of humanitarian needs; coordination with NGOs and other service providers; witness conduct in society; monitoring the emotional well-being of witnesses; constant assessment of risk based on physical threat, victim concerns that may affect witness cooperation, and necessary protection measures; establishing interview and courthouse security procedures; and establishing emergency communications and protocol. The UN warns of pitfalls and recommends precaution against providing assistance that can be interpreted as inducing testimony.<sup>107</sup>

Witness Protection can be an expensive and limiting proposition. In 2008, the UN reported costs incurred by nations with witness protection programs providing a full array of services, similar to the U.S. program. The UN reported that the data was difficult to come by, noting that this information is typically well protected by countries.

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<sup>106</sup> United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (New York: United Nations, 2008), 47, accessed 21 February 2015, <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

<sup>107</sup> United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual*, 10-19.

Table 5. Comparative Analysis of Witness Protection Program Cost			
Nation	Year	Annual Expenditure in \$US	Number of Cases/Witnesses
Australia	2005-2006	\$775,000	20-30 /year
Canada	2005-2006	\$1,823,000	53
Italy	2004	\$84,000,000	4,000
Philippines	Unrecorded	\$614,000	500
South Africa	2006-2007	\$7,500,000	250
Thailand	Unrecorded	\$500,000	100/year
US	2003	\$59,700,000	7,500 1970-2005
UK (Merseyside Police Force)	2006-2007	\$1,080,000	Unrecorded

*Source:* United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (New York: United Nations, 2008), 53, accessed 16 March 2015, <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

For this reason, the UN recommends States employ the physical protection aspect of witness protection through “Alternative Measures” carried out by police that does not include “full blown” protection measures. “Alternative Measures” include:

1. Temporary change of residence to a relative’s house or a nearby town;
2. Close protection, regular patrolling around the witness’s house, escort to and from the court and provision of emergency contacts;
3. Arrangement with the telephone company to change the witness’s telephone number or assign him or her an unlisted telephone number;
4. Monitoring of mail and telephone calls;
5. Installation of security devices in the witness’s home (such as security doors, alarms or fencing);

6. Provision of electronic warning devices and mobile telephones with emergency numbers;
7. Minimizing of public contacts with uniformed police;
8. Use of discreet premises to interview and brief the witness.<sup>108</sup>

The UN currently advocates that in human trafficking cases, a tailored prescription of alternative measures is more appropriate for victim/witnesses because,

In practice, in trafficking in persons cases, full witness protection is psychologically often not the best solution for the victim. Many victims long for their families and loved ones and cannot imagine changing their identity and relocating. Moreover, some practitioners have reported that they have yet to encounter a human trafficking organization or syndicate that is sufficiently organized, widespread, or equipped to pose the level of threat required of a full witness protection scheme.<sup>109</sup>

Thus, the UN argues that a witness protection police unit adequately trained and dedicated to providing alternative methods of physical protection and coordinating service needs for human trafficking victim witnesses should enable more prosecutions of traffickers while remaining fiscally feasible.

On its face, literature suggests that the U.S. mirrors the UN in its approach. For instance, in the United States, the PITF, a cabinet-level entity created by the TVPA and run by the DOS, coordinates agencies and organizations in anti-trafficking efforts, and sets U.S. anti-trafficking policy.<sup>110</sup> This task force and its operational arm, SPOG, are tasked with ensuring a corporate government approach addressing all aspects of human

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<sup>108</sup> UN Office on Drugs and Crime, *Good Practices*, 29-30.

<sup>109</sup> UN Office on Drugs and Crime, *Anti-Human Trafficking Manual*, 12.

<sup>110</sup> U.S. Department of State, “Office to Monitor and Combat Trafficking in Persons.”

trafficking to include enforcement of criminal laws and victim protection measures.<sup>111</sup> In January 2014, DOJ, HHS, and DHS, co-chairs of the SPOG Victim Services Committee, in partnership with PITF agencies, released the *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*.<sup>112</sup> The plan outlines actions to be accomplished by various federal agencies over the next five years that are designed to increase local, state, and federal coordination, collaboration, and capacity to combat human trafficking. SPOG summarized that “Increased collaboration and coordination within the Federal Government and among all levels of government will leverage resources, reduce duplication of effort, and help to create a strong and consistent victim service network across the United States.”<sup>113</sup>

The differences between international and U.S. guidance are most distinguishable when comparing protection (P2). The DHS explains the collaborative approach of placing equal value on the identification and stabilization of victims as on the investigation and prosecution of traffickers.<sup>114</sup> This “victim-centered approach” often requires a wide range of services to address a variety of needs, particularly secure housing, before cooperation with law enforcement can be expected.<sup>115</sup> HHS lists many of these emergency, short-term and long-term victim needs that must be addressed (Table 6):

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<sup>111</sup> U.S. Department of State, *Progress in Combatting Trafficking*, 2.

<sup>112</sup> *Ibid.*, 8.

<sup>113</sup> President’s Interagency Task Force, *Federal Strategic Action Plan*, 6.

<sup>114</sup> U.S. Department of Homeland Security, “A Victim-Centered Approach.”

<sup>115</sup> Farrell et al., *Identifying Challenges*, 7.

Table 6. Needs of Victims of Human Trafficking			
	International		Domestic Minors
	Adults	Minors	
Emergency			
Safety	X	X	X
Housing	X	X	X
Food/Clothing	X	X	X
Translation	X	X	
Legal Guardianship		X	X
Short/Long-Term			
Transitional housing	X		X
Long-term housing	X		X
Permanency placement		X	
Legal assistance	X		X
Advocacy			
Translation	X	X	X
Medical care	X	X	X
Mental health/counseling	X	X	X
Substance abuse treatment			X*
Transportation	X		X
Life skills	X	X	X
Education	X	X	X
Financial assistance/management	X		X
Job training/employment	X	X	X
Child care	X	X	X
Reunification/repatriation	X	X	X
* While substance abuse treatment may be a need for international victims, it was only identified as a need for domestic minor victims			

*Source:* Heather Clawson and Nicole Dutch, *Addressing the Needs of Victims of Human Trafficking: Challenges, Barriers, and Promising Practices* (Study of HHS Programs Serving Human Trafficking Victims, August 2008), accessed 29 November 2014, <http://aspe.hhs.gov/hsp/07/humantrafficking/Needs/ib.shtml>.

While the emphasis on victim services is well-established, U.S. Government guidance for the role of witness protection as relates to the four Ps is much less comprehensive than that of the UN. Within the U.S. victim-centered approach, the U.S. protection strategy is almost entirely based in providing victims and witnesses access to needed services; discussion of physical protection is notably absent. This absence may indicate a lack of evidence suggesting that human traffickers in the U.S. intimidate or

harm witnesses against them. Another possibility is that a link between victim reluctance to testify and witness intimidation in human trafficking cases has yet to be established. A third and most likely reason for lack of discussion about physical safety is that human trafficking case investigators and “911” are accepted as the default system of physical protection for witnesses in human trafficking cases.

Through grants, the U.S. has bolstered a foundation for NGO-driven case management services. Human trafficking victims are referred to case managers who assess their needs and help connect them to providers that can address them. All victims, regardless of their intentions to participate in the prosecution of their traffickers, are eligible for case management services. Eventually, as victims gain stability in their lives, trust in society and government are established, and some victims will come forward to assist in prosecution efforts.

The only substantial guidance given by the U.S. regarding witness protection comes from the SPOG in the form of the federal witness protection program. In 2007, SPOG’s subcommittee on domestic trafficking reported that witness protection services are available for domestic and international victims of human trafficking.<sup>116</sup> However, the services refer solely to the federal witness protection program administered by the DOJ, Office of Enforcement Operations. The protections are only afforded by the USMS

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<sup>116</sup> U.S. Department of Health and Human Services, “Senior Policy Operating Group On Trafficking in Persons: Subcommittee On Domestic Trafficking,” August, 2007, 7-8, accessed 21 February 2015, [https://www.acf.hhs.gov/sites/default/files/orr/final\\_report\\_of\\_the\\_subcommittee\\_on\\_domestic\\_trafficking.pdf](https://www.acf.hhs.gov/sites/default/files/orr/final_report_of_the_subcommittee_on_domestic_trafficking.pdf).



in the form of their full-blown witness protection program and only after federal prosecutors apply with the DOJ to use the program.<sup>117</sup>

U.S. states and local governments are following the federal government's lead, using guidance and programs provided by the federal government to stand up their capabilities in the fight against human trafficking. This is evidenced by the progress in state laws and task force creation. The Polaris Project provides an annual rating of the robustness of each state's human trafficking legislation. The ratings account for categories of law consistent with UN and federal guidance and are considered by the Polaris Project as fundamental to combatting human trafficking.<sup>118</sup> States are categorized in one of four tiers, with one representing states who meet Polaris Project's highest standard. To put the recent advances in context, Polaris's assessments for 2011 through 2014 depict the apparent nationwide urgency for legislation (figure 1).

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<sup>117</sup> U.S. Department of Health and Human Services, "Senior Policy Operating Group," 48.

<sup>118</sup> Polaris Project, "A Look Back: Building a Human Trafficking Legal Framework."

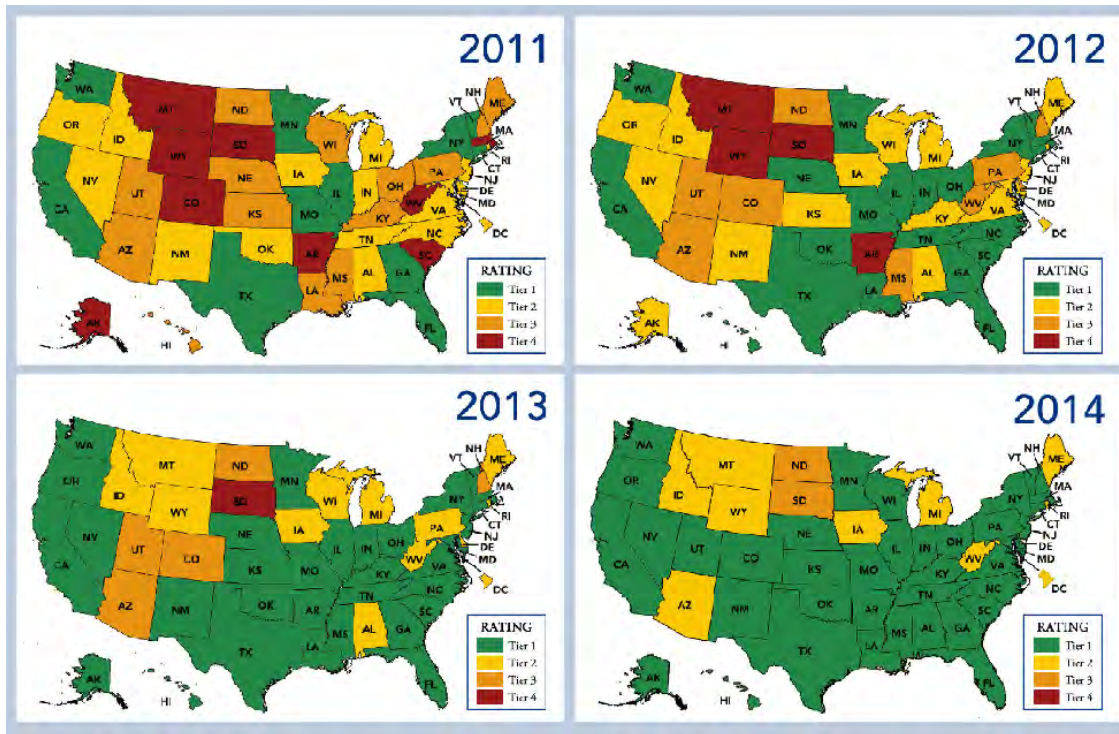


Figure 1. History of the State Ratings on Human Trafficking Laws

*Source:* Polaris Project, “A Look Back: Building a Human Trafficking Legal Framework,” 4, accessed 13 December 2014, <http://www.polarisproject.org/storage/2014SRM-capstone-report.pdf>.

In Colorado, a witness protection law provides for a limited amount of state funding to be distributed to subordinate jurisdictions as reimbursement for expenses incurred while providing temporary protection to witnesses. The state also mandates annual witness protection training for law enforcement officers, but provides no guidance as to what that training should look like or how it may apply to human trafficking cases. The state provides no guidance regarding witness protection measures in general, or as they may apply to human trafficking specifically.

In Denver, as in a number of local jurisdictions across the U.S., the local government developed its own witness protection program without formal state or federal

guidance. Denver's witness protection program addresses Protection (1), Protection (2), Prosecution, and Partnership as relates to combatting human trafficking. The Denver District Attorney's Office provides their framework in the *Denver Witness Protection Implementation Guide*. Denver uses their witness protection program as one of many tools developed by their Special Programs Unit and within their victim-centered approach to crime. Denver's witness protection investigators conduct physical protection duties and act as overall case managers. Like the UN, Denver recognizes the need for witness security investigators to have special skills that are not typically required in all lines of police work: expert intelligence gathering; skilled at collaboration with diverse partner agencies; and a considerable capacity for patience.<sup>119</sup> Denver's witness protection unit employs "Three Pillars," or components, of protection: tactical victim/witness protection strategies; victim/witness assistance services; and lifestyle transformation, something Denver recognizes as an especially important pillar in human trafficking cases. The first two pillars of Denver's strategy are very similar to the UN twin track approach of securing physical safety for the witness and providing such assistance and protection as is necessary.

Since its creation in 2008, Denver's program has grown from one half-time investigator to two full-time and one half-time investigators that provide protection services for victims and witnesses in human trafficking cases as well as for a variety of other crimes. Between 2008 and 2012, Denver's witness protection program provided services in 268 cases. During that time, there were no successful attacks against victims

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<sup>119</sup> Denver District Attorney's Office, *Denver Witness Protection Program Implementation Guide*, 5.

and witnesses. However, no data are available regarding the success of addressing other victim/witness needs or lifestyle change. Regardless, Denver appears to have recognized the immense workload placed on such a small witness protection staff. In 2012, the Special Programs Unit formed the Denver Anti-Trafficking Alliance to further bolster its response to human trafficking. Among other things, the Alliance’s mission “to create a victim-centered, multidisciplinary response to human trafficking in Denver through trauma-informed victim services, collaborative investigation and prosecution, education and awareness, and public advocacy” is essentially enhancing the case management and social services network for victims of human trafficking, which the witness protection unit can use as a force multiplier for helping victim/witnesses receive the services they need.<sup>120</sup>

Denver’s strategies are based on lessons learned and an initial consultation with the USMS witness security program. Denver has no subordinate jurisdictions, but recognizing a lack of standardized guidance, the Denver District Attorney’s Office offers their program as a model for other cities throughout the U.S. It is reasonable to assume that cities developing their own programs, without higher guidance, will come to very different conclusions about what a program should look like.

#### Protection System Comparison: Case Management Model

In helping victims and fighting trafficking, the U.S. Government acknowledges that trafficking victims need effective, comprehensive services, including case

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<sup>120</sup> Denver Anti-Trafficking Alliance, “Coordinated Response,” 2015, accessed 14 March 2015, <http://denveralliance.org/our-work/coordinated-response>.

management.<sup>121</sup> HHS describes the use of a single point of contact within the case management model.<sup>122</sup>

Given the complexity of victims' needs and the comprehensiveness of the services provided, service providers, law enforcement, and victims report that having a consistent case manager all the way from identification to case closure is a promising practice. While not possible in all cases due to staff turnover and the lack of funding for case managers for domestic victims, having this consistency benefits the victim, service providers, and law enforcement (including prosecutors). A central case manager with knowledge of all aspects of the victim's situation can ultimately save time and resources.<sup>123</sup>

Effective, comprehensive, and long-term case management for each victim is a key component in assisting victims of trafficking while simultaneously establishing the foundation for trust between the victim, service providers, and government officials pursuing prosecution of traffickers. Clawson found:

Upon identification, victims of human trafficking often present with a number of complex needs, requiring comprehensive services and treatment representing a continuum of care (from emergency, to short-term, and long-term assistance). Providers have conceptualized this continuum of care as having three phases: crisis intervention and assessment, comprehensive assessment and case management, and social reintegration.<sup>124</sup>

Clawson identified specific social service needs including "safe emergency, transitional, and permanent housing; legal services; medical services (including dental care); substance abuse treatment; trauma therapy; and case management and social

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<sup>121</sup> President's Interagency Task Force, *Federal Strategic Action Plan*, 15.

<sup>122</sup> Clawson, "Case Management and the Victim," 6.

<sup>123</sup> Clawson and Dutch, "Addressing the Needs," 9.

<sup>124</sup> Heather Clawson et al., "Final Report," In *Study of HHS Programs Serving Human Trafficking Victims* (Washington, DC: U.S. Department of Health and Human Services, 2009), 5, accessed 29 November 2014, <http://aspe.hhs.gov/hsp/07/HumanTrafficking/Final/>.

services,” as well as a need for “assistance and advocacy to navigate the various systems that victims interacted with (e.g., schools, social service agencies, insurance agencies, legal professionals, courts, child welfare, mental health/counselors, transportation.”<sup>125</sup> Essentially, Clawson also promotes the Case Manager as one individual who coordinates various services for the victim as a resource and central point of contact.<sup>126</sup>

According to the National Association of Case Management, key case management includes, among other things, “locating, linking, and following up with needed services and supports; monitoring, coordinating, and adjusting services and supports to achieve desired outcomes; crisis prevention and intervention;” and advocacy.<sup>127</sup> As applied by Clawson to trafficking victims, providers “have adopted intensive case management approaches,” tantamount to a holistic approach to “coordinated care” in providing social services. Clawson found that “case managers help stabilize victims by offering opportunities to obtain an education, develop life/social skills, learn a new language, gain job skills, and obtain employment, all essential in order for victims to reintegrate into society.”<sup>128</sup>

Clawson noted that law enforcement agencies and service providers agree that a central case manager is necessary for all parties involved in assisting victims. Case managers are responsible for “assessing clients’ needs for service and support;

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<sup>125</sup> Clawson et al., “Final Report,” vi.

<sup>126</sup> Ibid., viii.

<sup>127</sup> National Association of Case Management, “Who Is NACM Relevant To?,” accessed 29 November 2014, [http://www.yournacm.com/membership/who\\_relevant.html](http://www.yournacm.com/membership/who_relevant.html).

<sup>128</sup> Clawson et al., “Final Report,” 7.

identifying, obtaining, and coordinating those services for clients; coordinating and managing communications across systems involved in a case; and serving as a liaison for the client with other agencies,” as well as sometimes acting as translator and “accompanying clients to appointments, assisting/teaching clients to access public transportation, and teaching clients basic life skills.”<sup>129</sup> Successful approaches to service delivery included, but are not limited, to the “one-stop shop” model for providing services and consistent case management.<sup>130</sup> Addie Rauschert at the University of Richmond followed and examined Clawson’s study. Rauschert defined service provision as the “the process of supporting and empowering survivors” and emphasized the importance of service provision being a long-term, individualized endeavor.<sup>131</sup>

In addition to its role in successfully assisting victims, case management is also important in enabling the prosecution of traffickers. “Collaboration between law enforcement officials and NGOs that provide comprehensive victim assistance, including legal and case management services, has also proven to be a necessary component in successful prosecutions.”<sup>132</sup> As the DOS reported, the most successful legal and judicial systems employ “victim/witness coordinators” to work directly with individuals and their advocates to help them navigate the criminal justice system. Ideally, these coordinators bring expertise in dealing directly with victims and experience in ascertaining their needs and willingness to collaborate with law enforcement. When victims choose to participate

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<sup>129</sup> Ibid., 31.

<sup>130</sup> Ibid., 37.

<sup>131</sup> Rauschert, *An Individualized Continuum of Care*, 44-46.

<sup>132</sup> U.S. Department of State, *Trafficking in Persons Report*, 27.

in prosecution efforts, properly trained victim/witness coordinators can counsel them on what role they will play and help them prepare for depositions or court appearances. Throughout the recovery process, it is ideal for victims to have access to their own legal counsel as well.<sup>133</sup>

The importance of a central point of contact throughout the life of the trafficking case should not be understated. Service providers and law enforcement maintain that all trafficking victims need case managers. Significantly, prosecutors found that “case managers provided an important source of stability for victims that resulted in more consistent and credible witnesses; an important factor especially in cases dependent on victims for successful prosecutions.”<sup>134</sup> While the Clawson/HHS study speaks in large part to the emotional support element of case management, any discussion of the case manager’s role in procuring or coordinating physical protection was notably absent. Clawson’s study was limited by the small number of prosecutors participating in the study and understandably focused on the social resources and services that HHS provides—services which are typically not addressed by Health and Human Services providers. The Clawson/HHS study did acknowledge that victims’ “current safety risk” and “immediate safety” were important to successful trauma recovery models, but neither evaluated the importance of these measures in enhancing prosecution efforts, nor advocated for case managers to be involved in assessment or coordination of physical safety.<sup>135</sup>

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<sup>133</sup> U.S. Department of State, *Trafficking in Persons Report*, 16-17.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*



This is also true of Rauschert's study in which she focused on "victim identification and referral, the needs of survivors, innovative programs and models currently being used to meet those needs, interagency coordination in service provision, and the challenges faced by service providers in the United States today."<sup>136</sup> Rauschert acknowledged that the "framework for understanding the nature of service provision for survivors" in the United States focuses on, among other things, survivor basic needs.<sup>137</sup> However, Rauschert did not speak to the need for physical protection.

#### Witness Protection Model

Clawson and Rauschert's finding that long-term case management is necessary for providing successful service is compelling. Certainly, helping victims leave a life of trafficking to become healthy and contributing members of society is the goal of the victim-centered approach. However, the same case managers who coordinate social services for trafficking victims need to be trained to also coordinate physical protection services. USAID states that the "protection of trafficked persons is the cornerstone of a victim-centered approach" to combatting human trafficking.<sup>138</sup> Additionally, U.S. prosecutors, at all levels of government, agree that reluctance of victims to testify is the biggest challenge to prosecuting human trafficking cases.<sup>139</sup> Case management can be

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<sup>136</sup> Rauschert, *An Individualized Continuum of Care*, 10.

<sup>137</sup> *Ibid.*, 15.

<sup>138</sup> U.S. Agency for International Development, *Countering Trafficking in Persons*, accessed 26 October 2014, <http://www.usaid.gov/trafficking>.

<sup>139</sup> Farrell, *Identifying Challenges*.

successfully expanded to include coordination with law enforcement and prosecutors to physically protect trafficking victim/witnesses.

For instance, Denver's Witness Protection Program identifies human trafficking as a crime that may require witness protection.<sup>140</sup> The Denver Program is structured so highly skilled investigators "are not only ensuring an individual's protection, but are also often coordinating in-depth case management where they act almost as a personal coach to assist the individual in obtaining job skills, applying for benefits, going through substance abuse programs, etc."<sup>141</sup> The investigators implement tactical victim/witness protection strategies, assistance services, and lifestyle transformation into each of their cases. Of 268 open cases, there have been no successful attacks against victims and witnesses.<sup>142</sup> The investigator/case managers collaborate with many federal, state, and local law enforcement partners, including human services agencies and providers.<sup>143</sup>

In the area of witness protection, there is no need to disregard existing frameworks. The USMS espouses a similarly client-centered approach in providing the witnesses with physical protection combined with the basics of survival such as food, shelter, and security, as well as access to a broad range of services such as health care, education, and vocational training.<sup>144</sup> Victim/witness protection in the prosecution of

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<sup>140</sup> Denver District Attorney's Office, *Denver Witness Protection Program Implementation Guide*, 2.

<sup>141</sup> *Ibid.*, 5.

<sup>142</sup> *Ibid.*, 4-7.

<sup>143</sup> *Ibid.*, 8-9.

<sup>144</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*.

human traffickers will aid in the prevention of human trafficking in the United States.

Without willing witnesses, none but the most passionate prosecutors and law enforcement officers will expend energy to build cases against human traffickers.<sup>145</sup>

Since the formal establishment of the U.S. Federal Witness Protection Program in 1970, the United Nations has developed witness protection guidance, many nations have produced their own legislation, and an increasing number of states within the United States have also created witness protection legislation. The types and extent of protection services individual jurisdictions apply vary greatly and are reliant on funding. The best insight into the inner workings of witness protection are found in “WITSEC: Inside the Federal Witness Protection Program”, a book written by Gerald Shur, the founder of the U.S. federal witness protection program.

The first formal authorization of a witness security program originated with enactment of the Organized Crime Control Act of 1970, Title 5 section 501, wherein the Attorney General was granted authority to “provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.”<sup>146</sup> Lessons learned over the next decade led to passage of subsequent legislation to formalize many of the internal procedures being practiced by the witness protection program.<sup>147</sup> The Witness Protection Reform Act

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<sup>145</sup> Farrell, *Identifying Challenges*.

<sup>146</sup> Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (October 15, 1970).

<sup>147</sup> Earley and Shur, *WITSEC*, 265-266.

of 1984, part of the Comprehensive Crime Control Act of 1984, amended the Attorney General's power "the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists."<sup>148</sup>

The USMS was designated by the Attorney General to administer protection and services to witnesses authorized into the program. The USMS was selected based on its familiarity with physical protection and its inherent non-participation in criminal investigations. The USMS can focus on protection and not the outcome of the prosecution, somewhat alleviating claims that testimony was being bought by the government.<sup>149</sup> The same argument can be used to legitimize the sincerity of protection in the eyes of the protected, thus promoting trust. Success of the program has been documented in three distinctly different domains; protection of witnesses, conviction rates of defendants, and recidivism rates of program participants with criminal histories. The USMS Witness Security Program reports that since the program began in 1971, it has successfully protected approximately 8,500 witnesses and 9,900 authorized family members.<sup>150</sup> The USMS further claims that no Witness Security Participant, adhering to program guidelines, has been harmed or killed while under active protection of the

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<sup>148</sup> 18 USC § 3521 Subpart A, Part F.

<sup>149</sup> Earley and Shur, *WITSEC*, 112-113.

<sup>150</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*.

USMS.<sup>151</sup> The historical conviction rate of defendants, resulting from testimony of witnesses in the U.S. federal witness protection program is 89 percent.<sup>152</sup> From 1970 to 2000, testimony of witnesses in the Witness Security Program accounted for 10,000 convictions. Additionally, the recidivism rate of program participants during the same timeframe was approximately 21 percent or half the national rate.<sup>153</sup>

The success of the U.S. Federal Witness Protection Program gained worldwide recognition, influencing implementation of similar programs both domestically and abroad. The USMS is considered the foremost authority on witness security, providing training and guidance throughout the world.<sup>154</sup> In 2006, witness protection program representatives from eighteen nations attended the first International Witness Protection Symposium hosted by the USMS.<sup>155</sup> In 2008, during his opening speech, at the 3rd International Witness Protection Symposium, the Interpol Secretary General stated that the universal acknowledgement of “protecting an essential element (credible witness) in the effective administration of the criminal justice system” is the underlying objective at each of these international meetings.<sup>156</sup>

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<sup>151</sup> Ibid.

<sup>152</sup> Noble, “Witness Protection/Security a Key Partner in the Judicial Process.”

<sup>153</sup> B. G. Ohr, “Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes.”

<sup>154</sup> U.S. Marshals Service, *U.S. Marshals Service Witness Security Fact Sheet*.

<sup>155</sup> Ari Shapiro, “Sharing Tips on Witness Protection Programs,” *All Things Considered*, NPR radio, 19 July 2006.

<sup>156</sup> Noble, “Witness Protection/Security a Key Partner in the Judicial Process.”

The UNODC asserts that all criminal justice systems are accountable for providing measures of protection for persons, and persons close to them, who are at risk of harm due to their cooperation with the criminal justice system. The risk may be emotional or serious physical harm, protection measures can be provided before, during, and after trial and may include; psychological assistance, physical protection in and out of the courtroom, and possibly a covert witness protection program.<sup>157</sup> The number of jurisdictions, including European Union member nations, operating witness protection programs has grown substantially in recent years, with some providing services such as identity change and relocation to aid in prosecution of organized crime and terrorist organizations.<sup>158</sup> The Principles of Operation for a Witness Protection Program as outlined by the UN are:

1. Confidentiality and Organizational Autonomy
2. Partnerships – maintaining a network of partnerships with agencies involved in everyday life issues to include: personal identification (passports, driver's licenses); public housing; social security; prisons; rehabilitation; education; health, dental, and psychological care; and banking.
3. Neutrality – maintain separation from investigation agencies; make objective decisions independent from the prosecution; and making the witness clearly aware that the protection services being provided are not a reward for cooperation.
4. Transparency and Accountability.<sup>159</sup>

Domestically, state witness protection programs vary from nonexistent to some with a legislative basis and jurisdictions with personnel assigned to carry out protection

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<sup>157</sup> United Nations Office of Drugs and Crime, "Victim and Witness Protection," 2014.

<sup>158</sup> European Union, Piotr Bakowski, *Witness Protection Programmes: EU Experiences in the International Context* (Library of the European Parliament) January 2013, 2, 28, accessed 6 December 2014, <http://www.europarl.europa.eu/document/activities/cont/201301/20130129ATT59967/20130129 ATT59967EN.pdf>.

<sup>159</sup> UN Office on Drugs and Crime, *Good Practices*, 54-57.

duties. While no states have anything close to the capabilities of the federal program, primarily due to funding limitations, there are a few states that prioritize witness protection. For example, in 2008, Colorado passed C.R.S. 24-33.5-106, creating a witness protection board tasked with creating a witness protection program. The program functions as a state funding source, providing reimbursement to Colorado district attorney offices for money spent protecting prosecution witnesses.<sup>160</sup> Some jurisdictions within Colorado have created ad-hoc or formal witness protection programs that incorporate physical protection measures. In addition, the Denver District Attorney's office outlines its program in the *Denver Witness Protection Program Implementation Guide*, and offers it as a potential model for all U.S. cities.<sup>161</sup> The guide provides specific case examples, justifying the need for a specialized unit of investigators to provide physical protection strategies, assistance services, and lifestyle transformation for victim/witnesses.<sup>162</sup> The guide lists unique qualities these specialized investigators should possess as "coordinators of in-depth case management," to accomplish their unorthodox law enforcement duties.<sup>163</sup>

(Table 7) compares the victim-centered protection capabilities of case managers to those of witness protection officers. Case managers, as social workers, are more attuned to victim social services needs and available networks. Witness protection

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<sup>160</sup> C.R.S. 24-33.5-106

<sup>161</sup> Denver District Attorney's Office, *Denver Witness Protection Program Implementation Guide*.

<sup>162</sup> Ibid., 3-5.

<sup>163</sup> Ibid., 5.

officers, as funded career professionals within a police organization, are more likely to remain a single long-term point of contact for witnesses. While both systems are a tool for prosecutors and the criminal justice system, witness protection officers are more responsive due to their occupational understanding of the criminal justice system. Case managers score lowest in physical protection for witnesses because their capability is essentially limited to police referral. Witness protection officers provide instruction on individual security measures and plan and implement physical protection measures in times of danger, such as during court appearances.

Table 7. Comparative Analysis of Comprehensive Protection Capabilities				
<b>Protection Management System</b>	<b>Capability: Single Long Term Point of Contact for Witness</b>	<b>Capability: Coordination of Access to Services for Witness</b>	<b>Capability: Conduit to Prosecution Effort.</b>	<b>Capability: Coordination of Physical Protection for Witness</b>
Case Manager	2	1	2	3
Witness Protection Officer	1	2	1	1

*Source:* Created by author depicts comparison on a scale of 1-3 (one being the most capable) weighting the capabilities of case managers to those of witness protection officers.

Since the TVPA was enacted, the U.S. government has expended resources in combatting human trafficking.<sup>164</sup> Yet, even with this emphasis on the victim, if federal spending is an indicator of the United States' seriousness on the issue, then recent figures are disappointing:

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<sup>164</sup> U.S. Department of State, "Accomplishments Document (FULL) President's Interagency Task Force 2013," 1, accessed 29 November 2014, <http://www.state.gov/documents/organization/207420.pdf>.



**Table 8. Current Law and §47 as passed by the Senate:  
A Comparison of Authorizations of Appropriations  
(in \$ U.S. millions)**

Authorized Programs	FY11	FY14- FY17
	P.L. 110- 457	§47
<b>International Programs</b>		
<b>U.S. Agency for International Development (USAID)</b>		
USAID: Pilot Program for Rehabilitation Facilities (22 U.S.C. 7105 note)	\$2.5	Struck
<b>U.S. Department of State (DOS)</b>		
DOS: Interagency Task Force (22 U.S.C. 7110(a))	\$5.5	\$2
DOS: Interagency Task Force: Reception Expenses (22 U.S.C. 7110(a))	\$0.03	Struck
DOS: Interagency Task Force: Additional Personnel (22 U.S.C. 7110(a))	\$1.5	N/A
DOS: Prevention (22 U.S.C. 7110(c)(1)(A))	\$10.0	\$10.0
DOS: Protection (22 U.S.C. 7110(c)(1)(B))	\$10.0	\$10.0
DOS: Prosecution and Meeting Minimum Standards (22 U.S.C. 7110(c)(1)(C))	\$10.0	\$10.0
DOS: Refugees and Internally Displaced Persons (22 U.S.C. 7110(c)(1)(B))	\$1.0	\$1.0
<b>President</b>		
President: Foreign Assistance for Law Enforcement Training (22 U.S.C. 7110(d)(B))	\$0.25	N/A
President: Foreign Victim Assistance (22 U.S.C. 7110(e)(1))	\$15.0	\$7.5
President: Foreign Assistance to Meet Minimum Standards (22 U.S.C. 7110(e)(2))	\$15.0	\$7.5
President: Research (22 U.S.C. 7110(e)(3))	\$2.0	N/A
President: Award for Extraordinary Efforts (22 U.S.C. 7109b(d))	— <sup>a</sup>	N/A
<b>Domestic Programs</b>		
<b>U.S. Department of Health and Human Services (HHS)</b>		
HHS: Assistance for Trafficking Victims (22 U.S.C. 7110(b)(1))	\$12.5	\$14.5
HHS: Assistance for U.S. Citizens (USCs) and Lawful Permanent Residents (LPRs) (22 U.S.C. 7110(b)(2))	\$7.0	\$8.0
HHS: Local Grant for USC/LPR Sex Trafficking Victims (42 U.S.C. 14044a(d))	\$8.0	\$8.0 <sup>c</sup>
HHS: Pilot Program for Juveniles (42 U.S.C. 14044b(g))	\$5.0	N/A
HHS: Child Advocates for Unaccompanied Minors	— <sup>b</sup>	\$1.0
<b>U.S. Department of Homeland Security (DHS)</b>		
DHS: Immigration and Customs Enforcement (ICE) Investigations (22 U.S.C. 7110(i))	\$18.0	\$10.0
DHS: Human Smuggling and Trafficking Center (HSTC) (22 U.S.C. 7109a(b)(4))	\$2.0	\$1.0
<b>U.S. Department of Justice (DOJ)</b>		
DOJ: Assistance for Tracking Victims (22 U.S.C. 7110(d)(A))	\$10.0	\$11.0
DOJ: Assistance for USCs and LPRs (22 U.S.C. 7110(d)(C))	\$7.0	\$11.0
DOJ: Prevent Domestic Sex Trafficking (DST)—Study on Trafficking (42 U.S.C. 14044(c)(1))	\$1.5	N/A
DOJ: Prevent DST—Conference (42 U.S.C. 14044(c)(2))	\$1.0	\$0.25
DOJ: Local Grant for Law Enforcement (42 U.S.C. 14044c(d))	\$20.0	\$10.0
DOJ: Federal Bureau of Investigation (FBI) (22 U.S.C. 7110(h))	\$15.0	N/A
<b>U.S. Department of Labor (DOL)</b>		
DOL: Assistance for Trafficking Victims (22 U.S.C. 7110(f))	\$10.0	\$5.0

*Source:* CRS analysis of P.L. 106-386, P.L. 108-193, P.L. 109-164, P.L. 110-457, and S. 47 as passed by the Senate on February 1, 2013.

These figures show that more appropriations are given for foreign programs than domestic programs. In addition, there was an overall decrease in spending for agencies tasked with anti-trafficking activities. Even though HHS and DOJ were given slightly more for victims service programs, it is difficult to imagine how such a small amount will have any serious or lasting impact on trafficking, particularly considering the “victim-centered” approach the U.S. government is now implementing.

### Summary of Analysis

Analysis compared witness protection protocols and guidance developed by the international community, the U.S., and state and local governments. Comparison shows that the UN provides guidance to the international community; the U.S. lacks guidance to subordinate jurisdictions; and state and local governments sometimes develop unique witness protection protocols for their own use. Analysis found that although the U.S. government does not provide witness protection protocol guidance, some state and local governments employ witness protection measures that would benefit from guidance.

Further analysis compares protection capabilities of case management systems to those of witness protection systems for combatting human trafficking. Comparison shows that case management systems provide a trained, single point of contact for human trafficking victims to access a network of social services. While case managers are unable to provide physical protection, they are more capable of servicing victims whether or not they are willing to cooperate with law enforcement. Witness protection systems also provide a single point of contact for human trafficking victims to access a network of social services. Witness protection systems also provide physical protection for victims. However, police officers require non-traditional capabilities and traits to accomplish

witness protection duties, and cannot reasonably be expected to provide services to victims who are not willing to cooperate.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### Summary

Beginning in 2000, the international community and the U.S. have developed a framework of laws designed to make all forms of human trafficking illegal and prosecutable. A noted problem is, even with laws in place, traffickers are not being prosecuted to a degree that promotes deterrence. One reason for this may be that victims, once identified by law enforcement, are unwilling to testify against traffickers for fear of retribution by traffickers and/or their own fear of law enforcement authorities. This thesis closely examines the victim-centered approach to combatting human trafficking, and pays particular attention to the protection component of the four Ps paradigm as it relates to UN and U.S. guidance. One enhancement the U.S. can make is to provide witness protection protocol guidance as part of its victim-centered strategy in combatting human trafficking.

To gain understanding of the nature and problem of human trafficking, why combatting human trafficking is important, how all levels of government have responded to human trafficking, and whether and what witness protection guidance, policies, and programs exist as related to combatting human trafficking, many government documents and available literature were reviewed. Qualitative analysis was used to compare and contrast the differences in guidance being offered by the UN and the U.S. as it relates to the use of witness protection measures in the application of the universally accepted victim-centered approach to combat human trafficking. Analysis found that the U.S. advocates a NGO driven case management system to accomplish many of the same ends

as the UN's law enforcement driven witness protection guidance. The lack of U.S. guidance and quantitative data supporting the need for physical protection of human trafficking victims suggests that the U.S. Government simply does not believe victim/witnesses are in danger of harm. However, further analysis found that the local government in Denver, Colorado, concluded that witnesses may be in danger, and that, in such cases, physical protection should be combined with case management services through the implementation of a witness protection program.

This prompted further comparison of NGO case management capabilities to those of witness protection systems as they relate to providing protection as part of a victim-centered approach. Analysis found that while witness protection officers can provide the same services to victims as case managers, case managers are not able to provide the physical protection measures afforded by witness protection officers. Deeper analysis, however, found that in order to act as case managers in human trafficking cases, witness protection officers must possess certain skills and qualities not necessarily present in normal police work, and they must not be involved in the prosecutorial aspect of the case. While case managers are not capable of physical protection duties, they are more innately involved in the social services networks that are the keystone of the victim-centered approach.

### Implications

Federal guidelines can be improved to provide a more effective platform from which the U.S. can combat human trafficking. It is universally accepted that all victims should have access to services they need to regain their self-esteem and control of their lives. Current U.S. guidance calls solely for case management to provide a conduit, from

society, through which victims and witnesses are afforded a single point of contact who directs them to the various services needed and available. A gap in U.S. federal guidance, as it relates to physical protection, remains. The gap is recognized and addressed through witness protection guidance by the UN and by local government in the U.S.

Witness protection can be a useful tool for combatting human trafficking. While there are indications that the U.S. Government does not believe human trafficking victim/witnesses face unreasonable harm, there are jurisdictions subordinate to the federal government that see the need for witness protection. Lacking federal guidance, these jurisdictions struggle to create a program. Without federal guidance, state and local programs will inevitably lack uniformity and suffer unnecessary growing pains. Witness protection is costly and may only be useful in a relatively few number of human trafficking cases. Therefore, witness protection officers should only be employed as case managers when a victim becomes a witness in the prosecution of traffickers.

### Recommendations

The U.S. Federal Witness Protection Program employs extensive protection measures and the associated costs are well beyond what any state or local government can likely afford. However, there are undoubtedly techniques, practices, and lessons learned that can be used to formulate federal guidance to provide a standard blueprint for states to follow in developing their own programs. Additionally, Denver offers its witness protection program as a template. The U.S. government can look to the USMS federal witness protection program and other current programs like Denver's in formulating proposed witness protection guidance for all states and local jurisdictions.

Financially, it makes sense that witness protection be tied to participation in the criminal justice system. While all victims should have access to services, the existing NGO case management system should continue to play a predominant role. Case agents and prosecutors should authorize victims to receive witness protection services provided by specialized police when they agree to participate as witnesses in the prosecution of traffickers. Given the numbers, law enforcement agencies cannot realistically be expected to provide individual physical protection and case management services for all victims of human trafficking.

Witness protection systems based on centralized guidance are a logical source of uniform data for further analysis. Witness protection guidance should include a national reporting mechanism, whereby state and local witness protection programs track statistics and pass information on to a central clearinghouse. Data collection should include rates of successful program participation through completion of testimony, reasons program participants fail to ultimately testify, successful prosecution rates when participants testify, recidivism rates of protection program participants, and degree and direction of lifestyle change (education, jobs, dependence on social services) within definitive timeframes.

Guidance should include physical protection measures in and out of court as well inter-jurisdictional coordination recommendations. For the benefit of both the prosecution and the witness, witnesses living in one jurisdiction and testifying in another should be afforded a seamless physical protection scheme. Guidance should include recognition that witness protection officers involved in inter-jurisdictional cases must be knowledgeable of the differences in available social services between jurisdictions.

### Future Research

The U.S. Government should engage in further research addressing the effectiveness of federal witness protection protocol guidance and what kind of training format should be made available to subordinate jurisdictions. Additionally, quantitative data will improve governmental ability to assess and improve guidance and systems. Research and analysis will help inform any initial attempts to draft witness protection guidance as classified data also becomes available.

Most U.S. jurisdictions currently have an anti-human trafficking legislative framework in place. Some state and local jurisdictions currently use witness protection programs to combat human trafficking. A comparative study of legal framework and witness protection capability would be helpful in determining if the presence of witness protection increases the likelihood of charging traffickers under anti-trafficking statutes.

Victims require both a sense of protection and administration of vital humanitarian services to become willing witnesses against their traffickers. A study to determine what additional social services training and education should be required for witness protection officers will facilitate witness participation in human trafficking cases and ensure victim/witness access to social service networks. Findings will inform individual jurisdictions, and allow realistic assessment of the suitability and feasibility of starting a witness protection program.

Future studies can provide much needed statistics for evaluation of current programs and development of innovative ideas in the fight to combat human trafficking. The National Institute of Justice awarded three grants under the Fiscal Year 2013 transnational crimes solicitation to study trafficking in persons. San Diego State



University will produce statistical estimates of the scope of labor trafficking in North Carolina; Texas Christian University will research the involvement of organized crime in human trafficking in the U.S. between 2000 and 2012; and the University of Chicago will investigate the union of radicalization and human trafficking among Somali-Americans. The results of these studies should provide a basis to make an informed evaluation of the effectiveness of the current U.S. victim-centered approach to combatting human trafficking.

### Conclusion

Current estimates of the number of human trafficking victims, victims of present day slavery, are as high as 35 million worldwide and over 60,000 in the U.S. alone. Human trafficking enjoys its prolificacy because it is extremely difficult to understand and combat. Because victims are vulnerable and dependent upon their traffickers, an unprecedented level of coordination and cooperation among anti-trafficking organizations is required; trafficking is not occurring in the public spotlight; prosecution rates are low; and monetary gain for traffickers is high. However, over the past two decades, leaders across the globe have made immense progress in a concerted effort to create a holistic framework and establish guidance to combat human trafficking.

In 2000, the UN and U.S. published the Palermo Protocol and the TVPA respectively, setting in motion the beginning of the global war on human trafficking. The four Ps are the overarching context from which human trafficking laws are created and strategies are born. This fight is in its relative infancy, and as the UN and U.S. grapple with the enormity and complexity of the issue, many ideas and programs fail to take root or do not accomplish what is hoped for. However, others provide promising results and

can be shared as best practices. One immediate enhancement the U.S. can make is to add a witness protection protocol framework to its comprehensive guidance in combatting human trafficking.

Not all state or local governments will implement a witness protection program. However, a witness protection template provided by the federal government will at least provide a common understanding of what witness protection can look like, what it can provide, and what jurisdictions can expect when they need to interact with one another. Federally drafted witness protection guidance will also afford a centralized mechanism for witness related data collection.

The effort to combat human trafficking is in its infancy, and as awareness of the problem and funding to combat it increase, there will likely be more prosecutions and convictions. However, the discrepancy between the fast rising number of trafficking victims and the relatively low number of prosecutions reflects that much work is yet to be done. Ideally, the availability of protection will lead to increased victim willingness to participate in criminal prosecution efforts as witnesses. The availability of witnesses in human trafficking cases will result in more prosecutions of human traffickers. Convictions will serve to punish offenders with prison sentences, protect society by removing offenders, and serve as a deterrent to others who contemplate human trafficking as a source of income.

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